

EXHIBIT D

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

3

AT CHARLESTON

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RE: ETHICON, INC, PELVIC,) Master File No.

REPAIR SYSTEM PRODUCTS) 2:12-MD-02327

5

LIABILITY LITIGATION) MDL 2327

_____)

6

THIS DOCUMENT RELATES TO THE
FOLLOWING CASES IN THE WAVE 1

7

OF MDL 200:

TERI KEY and JOHN SHIVELY,) Case No.

8

) 2:12-cv-00379

Plaintiffs,)

9

vs.)

ETHICON, INC., ET AL.,) JOSEPH R. GOODWIN

10

) U.S. DISTRICT JUDGE

Defendants.)

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_____/

12

13

VIDEOTAPED DEPOSITION OF NATHAN W. GOODYEAR, M.D.

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16

March 3, 2016

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9:15 a.m. to. 3:30 p.m.

18

19

TRACY IMAGING

20

KNOXVILLE, TENNESSEE

21

22

23

Michele Faconti, RPR, LCR (667)

24

Nathan W. Goodyear, MD

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20 Also Present: Ernie Tracy, Videographer

21

22

23

24

Nathan W. Goodyear, MD

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1 STIPULATION

2 The deposition of Nathan W. Goodyear, M.D.,
3 called as a witness by the Defendants, pursuant to
4 all applicable rules on the 3rd day of March, 2016,
5 at the offices of Tracy Imaging, Knoxville,
6 Tennessee, before Michele Faconti, RPR, Licensed
7 Court Reporter and Notary Public in and for the
8 State of Tennessee.

9 It being agreed that Michele Faconti, a
10 Tennessee Licensed Court Reporter, may report the
11 deposition in machine shorthand, afterwards reducing
12 the same to typewritten form. All objections,
13 except as to the form of the question, are reserved
14 to on or before the hearing.

15 It being further agreed that all formalities as
16 to notice, caption, certificate, transmission,
17 etcetera, are expressly waived, EXCLUDING the
18 reading of the completed deposition by the witness,
19 and the signature of the witness.

20

21

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24

Nathan W. Goodyear, MD

1 (09:15 a.m.)

2 VIDEOGRAPHER: We're on the record. My
3 name is Ernie Tracy. I'm a videographer for
4 Golkow Technologies.

5 Today's date is March the 3rd, 2016. The
6 time is 9:15 on the camera.

7 This is in the matter of Shively versus
8 Ethicon. And the deponent today is Dr. Nathan
9 Goodyear, M.D.

10 And the attorneys will now identify
11 themselves for the record.

12 MS. MOORE: Kim Moore on behalf of the
13 defendants.

14 MS. CAPODICE: Cami Capodice on behalf of
15 the defendants.

16 MS. KOTT: Mikalia Kott appearing on behalf
17 of all plaintiffs, Ms. Shively, Ms. Morrow,
18 Ms. Taylor and Ms. Bennett, as well as the
19 consortium plaintiffs in cases where that applies.

20 MR. KOTT: And my name is Joseph Kott and
21 I am appearing on behalf of the same plaintiffs
22 identified by my Co-Counsel.

23

24

Nathan W. Goodyear, MD

1 WHEREUPON,

2 Nathan W. Goodyear, M.D.,

3 having been first duly sworn, as hereinafter

4 certified, testified as follows:

5 DR. GOODYEAR: I do.

6 EXAMINATION

7 BY MS. MOORE:

8 Q. Good morning, Dr. Goodyear.

9 A. Good morning to you.

10 Q. My name, as you heard, is Kim Moore, and
11 I'm going to be asking you some questions today
12 about your expert report -- I should say, expert
13 reports, that you prepared in the Shively, Taylor
14 Morrow, and Bennett cases.

15 A. Uh-huh.

16 Q. And before I get into any specifics, let's
17 just begin with some specific ground rules.

18 Have you ever been deposed before?

19 A. It's been a few years ago, but yes.

20 Q. Okay. And how long ago was that?

21 A. It was during my residency.

22 Q. All right. And you understand the rules
23 with respect to the deposition. You're under oath,
24 correct?

1 A. Just like being in court.

2 Q. Just like being in court.

3 And if I ask you a question, you need to
4 answer --

5 A. Uh-huh.

6 Q. -- verbally.

7 A. Okay. Yes.

8 Q. No problem. I'll try and remind you as we
9 go throughout the day. But it's important to respond
10 verbally so our court reporter can take it down.

11 If I ask you a question, you don't
12 understand it, let me know and I'll be happy to
13 rephrase it.

14 A. Sure.

15 Q. And if I ask you a question and you
16 answer, I will assume that you understood my
17 question; is that fair?

18 A. That's fair.

19 Q. Now, as we move forward today, if you need
20 a break, let me know. We'll be happy to accommodate
21 you. I know we're going to try and tackle four of
22 the cases. So let me just begin.

23 Have you prepared expert reports in any
24 other mesh cases?

1 A. Not in addition to these, no.

2 Q. So the only mesh cases where you've
3 prepared a report would be in the Shively, Taylor,
4 Morrow, and Bennett cases?

5 A. That is correct.

6 Q. Okay. And when were you first retained in
7 these matters?

8 A. The exact date I cannot recollect, but I
9 can tell you that the first invoice that I submitted
10 was in November.

11 Q. Of 2015?

12 A. That is correct.

13 Q. And who contacted you?

14 A. I cannot recall who exactly contacted me.

15 Q. Well -- and why is that?

16 A. It was a phone call, so I can't remember
17 specifically who. And so if I can't tell you
18 exactly who, I'm not telling the whole truth.

19 Q. Okay. But you were contacted by someone
20 at the --

21 A. The firm.

22 Q. The firm meaning?

23 A. That's correct.

24 Q. Which firm? The Herman and Herman?

1 A. Yes. HHK.

2 Q. And tell me about the request that you
3 received in November of 2015.

4 A. What I do remember is they asked if I
5 had -- these were clients of mine, and they
6 initially wanted to assess, you know, my care of
7 these clients. And that's about what I recall, the
8 initial conversation.

9 Q. They were clients?

10 A. The patients.

11 Q. The patients were clients of yours?

12 A. Yeah.

13 Q. And with respect to your clients that
14 you -- you were contacted by somebody at The Herman
15 Law Firm?

16 A. Uh-huh.

17 Q. And requested to provide what your
18 opinions on the care and treatment or --

19 A. Well, the initial --

20 Q. Can you be a little bit more specific?

21 A. Yeah. Just because of the -- the time
22 frame and the specificity of the conversation, they
23 asked if I would be willing to be involved in being
24 an expert witness for these particular clients.

1 Q. All right. And what did you say?

2 A. I said "yes."

3 Q. And why did you say "yes"?

4 A. Because as a physician, I took care of
5 them and just to get to the -- you know, the truth
6 of the matter, not to hide anything.

7 Q. And did anyone ever suggest that you
8 should hide anything?

9 A. No.

10 Q. Okay. Because you brought it up. I
11 didn't know why you brought up hiding something.

12 A. Yeah. No. Just because somebody asked
13 you to do something, you just say "yes."

14 Q. So have you ever served as an expert
15 before?

16 A. I have not.

17 Q. Okay. This is the first time you've ever
18 been asked to serve as an expert?

19 A. That is correct.

20 Q. And when you were first contacted by
21 someone at the Herman firm to serve as an expert for
22 your clients, which client was it that you were asked
23 to prepare a report for? Was it all of them at that
24 time or --

1 A. Yes, it was all at that time.

2 Q. And all, just so the record's clear, would
3 be Shively, Taylor, Morrow and Bennett?

4 A. That's correct.

5 Q. And what did you do at that point in time?
6 You had a call with someone. Was it a lawyer?

7 A. Yes.

8 Q. But you don't remember the name of the
9 lawyer?

10 A. I think it was a representative, Wendy
11 first, and then I think Mikalia was involved
12 thereafter.

13 Q. Mikalia Kott who's with us here today?

14 A. Yeah. But, again, that's not -- you know,
15 I don't have a photographic memory, so...

16 Q. That's understandable.

17 And so you were asked to prepare reports.

18 Did you have a -- before agreeing to serve
19 as an expert, did you speak individually to
20 Ms. Shively or any of your other clients?

21 A. No.

22 Q. So you just agreed to go forward in
23 your work on behalf of these clients at the
24 request of the Herman firm?

1 A. Yes.

2 (Exhibit No. 1 marked.)

3 Q. And -- let's see. Let's look at your
4 Notice of Deposition, which I've marked as Exhibit
5 No. 1. I'll attach that to the record.

6 Do you have a copy, sir?

7 A. I do not.

8 Q. Okay. I'll give you a copy. You can look
9 at this.

10 I know we've had many notices going back
11 and forth. But what I want to direct your attention
12 to is Schedule A. Would you take a moment just to
13 look at that, please?

14 MR. KOTT: Do you have a copy?

15 MS. CAPODICE: We don't have an extra
16 copy, I apologize.

17 MR. KOTT: That's fine. We'll work
18 through it.

19 BY MS. MOORE:

20 Q. And with respect to the documents that you
21 were requested to bring today, you know that you're
22 being deposed as an implanter, someone who treated
23 your clients, correct?

24 A. That is correct.

1 MR. KOTT: I'm going to object to calling
2 them his clients. These are his patients. But
3 you can go on.

4 MS. MOORE: Okay. I'm going to object to
5 the commentary on the record. I'm only using
6 the words that Dr. Goodyear used earlier when
7 referring to Ms. Shively, Morrow, Taylor and
8 Bennett.

9 BY MS. MOORE:

10 Q. Is that correct, Dr. Goodyear?

11 A. Well, they are -- they are my patients.

12 Q. And you did say "clients," though,
13 correct?

14 A. I may have inappropriately spoken, but
15 yes.

16 Q. Okay. All right. Let's look at the
17 Schedule A. And the first one asks for all
18 documents relating to fees and billing. And I
19 believe your Counsel has provided us with what is
20 December time documentation. Actually, let's see.
21 And it goes into December and then into January.
22 And then February.

23 All right. It looks like based on --

24 MR. KOTT: I'm sorry. There's one page

1 missing. There's a November page, I think.

2 MS. MOORE: Okay. You have a
3 November 30th, just so the record is clear.

4 MR. KOTT: It's up to date. It seems
5 to be up to date.

6 Are there any bills before this? Yes,
7 there are. There's a sheet from the entirety
8 of November that hasn't been printed.

9 MS. MOORE: Okay.

10 MR. KOTT: You can look at it on here, if
11 you want.

12 MS. MOORE: No, you can print -- okay.
13 You can print that.

14 BY MS. MOORE:

15 Q. The record reflects you were -- I think
16 you believe -- strike that.

17 You said you were retained in November
18 sometime, and as your Counsel has pointed out, you
19 have some additional invoices for that time period;
20 is that fair to say?

21 A. Correct.

22 Q. Okay. And what is your hourly rate?

23 A. \$500 an hour.

24 Q. And the total amount of time you've spent

1 on these matters would be how much?

2 A. Well, it's -- it's itemized there if you
3 read it, what's the November hours from there,
4 Mikalia? It's five something.

5 MS. KOTT: Five and a half.

6 THE WITNESS: Five and a half. So maybe
7 twenty-two and a half. 51, three-quarters. Looks
8 like it's close to a hundred hours.

9 BY MS. MOORE:

10 Q. Close to --

11 A. Or it's over a hundred hours.

12 Q. Over a hundred hours. So that would be
13 about how much, sir?

14 A. Well, 500 times that.

15 Q. So that would be about how much have you
16 earned since being retained to work in this
17 litigation?

18 A. Let's see. So 500 times 12. So we're
19 talking what, 50,000, \$60,000. 48.

20 Q. Now, in your invoice that we'll mark as
21 Exhibit No. 4 -- I've got the CV and the deposition
22 already marked. So we'll go ahead and mark your
23 invoices four, noting that we'll attach the missing
24 sheet on a break.

1 But under "Description," it references
2 emails and communication emails.

3 Have you produced those emails today?

4 A. Like I said, everything I've got, they've
5 produced. I didn't bring those with me.

6 MS. MOORE: Do you have emails and
7 correspondence?

8 MR. KOTT: No.

9 (Exhibit No. 4 marked.)

10 BY MS. MOORE:

11 Q. And why don't you have your email? Did
12 you do a search for all your emails with Plaintiffs'
13 Counsel?

14 A. I mean, I have them, but I haven't -- I
15 mean, I was just told --

16 MR. KOTT: Well, I'll --

17 THE WITNESS: -- not to bring them.

18 MR. KOTT: I'm sorry. I'll put on the
19 record, he got this last night. Okay.

20 And we have not had a chance to go
21 through the emails, we can't produce them
22 in bulk to you. All right. The emails --
23 in other words, some of it's privileged,
24 obviously, and some of it is work product.

1 MS. MOORE: Well, see, that's what gets --
2 he's an implanter, so I don't believe that
3 those are privileged.

4 MR. KOTT: Okay. Well, it's obviously an
5 issue, so we will have to address it separate.

6 He does -- on the record, he does not have
7 those with him --

8 MS. MOORE: All right. Then we're going
9 to have to --

10 MR. KOTT: -- by instruction of Counsel.

11 MS. MOORE: And then we're going to have
12 to hold open, because that's going to be --
13 that's part of --

14 MR. KOTT: You can hold it open and we'll
15 object to holding it open. That's just how it
16 goes.

17 BY MS. MOORE:

18 Q. All right. But so the record is clear,
19 we've requested certain communications, including
20 emails referenced in Schedule A for your Notice of
21 Deposition. And you received a copy of this, I
22 understand, from your Counsel last night?

23 A. No --

24 MS. KOTT: Hang on. Do you want me to

1 make the record?

2 I'll make the record.

3 MS. MOORE: How many people just so -- are
4 going to appear? I mean, that's fine --

5 MS. KOTT: I'm appearing as Counsel for
6 the plaintiffs.

7 MS. MOORE: But as we go forward, that's
8 fine, Ms. Kott, that's fine for responding now,
9 but as we go forward, it's probably easier for
10 all of us if we deal with one.

11 MS. KOTT: As far as questioning goes,
12 you'll be dealing with one attorney, but for
13 the purpose of making this record, the Notice
14 of Deposition and this Schedule A, Exhibit A,
15 was emailed to Dr. Goodyear's office, to some
16 general office email address, after 7:00 p.m.
17 Eastern time. Dr. Goodyear, as far as I
18 understand, did not access that email and has
19 not seen the specific emails that were
20 requested, that you're referring to here. Or
21 the whole document in general.

22 So, if Counsel wishes to have the
23 emails that were requested, which are
24 specifically what is required under Rule 26 and

1 not broad all emails, it is what is required to
2 be disclosed under Rule 26, we will go through
3 the emails and produce them for you tomorrow.

4 MS. MOORE: Okay. Thank you. We would
5 request all the emails and correspondence that
6 you have with your Counsel --

7 MR. KOTT: Object to the form that we are
8 not --

9 MS. MOORE: Please don't interrupt me.
10 Counsel, I did not interrupt --

11 MR. KOTT: You keep referring to me as his
12 Counsel.

13 MS. MOORE: Okay. Now, I got --

14 MR. KOTT: Okay.

15 MS. MOORE: I got -- don't interrupt me,
16 please.

17 MR. KOTT: Okay.

18 MS. MOORE: As I said, we have requested
19 copies of all your correspondence that would be
20 to any attorneys that you've worked with. And
21 also to any of, as you said earlier, clients,
22 or your patients.

23 MR. KOTT: Object to the word "clients."
24 He told you he misspoke.

1 MS. MOORE: Okay. And I'm going to object
2 to your coaching this early on. All right?

3 MR. KOTT: Well, I'm going to object to
4 you asking leading and misleading questions.

5 MS. MOORE: I can ask leading questions.

6 MR. KOTT: You're asking misleading
7 questions.

8 MS. MOORE: I object to the coaching of
9 the witness and the characterization. Move to
10 strike.

11 MR. KOTT: Yeah. Well, I still think
12 you're asking misleading questions.

13 BY MS. MOORE:

14 Q. All right. So let's go through -- as
15 referenced in the invoice in Exhibit No. 4, there
16 are many emails and communications. Those are the
17 documents that obviously we'll need you to produce,
18 in addition to anything that you have -- did you
19 bring your files today pertaining to these patients?

20 A. Yes, I did.

21 Q. Okay. And where are they?

22 A. They're in one of the boxes.

23 Q. Okay. Let's start with just Ms. Shively,
24 please.

1 A. Okay. Do you want me to get those? Is
2 that what you're asking?

3 Q. Yes.

4 THE WITNESS: You want me to take this
5 off?

6 VIDEOGRAPHER: Sure.

7 MS. MOORE: Going off the record for a
8 moment.

9 VIDEOGRAPHER: Okay. We're going off.
10 The time on the camera is 9:30 a.m.

11 (Off the record.)

12 VIDEOGRAPHER: We are back on the record.
13 And the time is 9:35 a.m.

14 BY MS. MOORE:

15 Q. All right. Doctor, back on the record.

16 I see you have in front of you what looks
17 like two binders and a clip, some information. Will
18 you describe what you have there for us?

19 A. These are the medical records for Teri
20 Shively. This is medical records for Charlene
21 Taylor. And this is the same medical records for
22 Dina Bennett.

23 Q. Thank you. And if you will hand me -- let
24 me do this before we go too far down the path. I

1 want to go ahead and mark those. But let me first
2 mark your CV, which is also requested.

3 You've given me an updated copy of your
4 CV, correct?

5 A. That is correct.

6 Q. So we'll mark that as Exhibit No. 2. And
7 then your report in the Shively case we'll mark as
8 Exhibit No. 3.

9 A. Okay.

10 (Exhibit No. 2 and No. 3 marked.)

11 Q. Exhibit No. 4 I'd like to mark as what
12 you've produced today. And I think you said the
13 first one is pertaining to the invoice, and the
14 fifth one would be the Shively records; is that
15 right?

16 A. Yes.

17 (Exhibit No. 5 marked.)

18 Q. Now, looks like it's Bates stamped
19 Goodyear 00 -- well, Goodyear 1 through 89?

20 A. If that's what it's marked.

21 Q. And these are records that come from
22 where?

23 A. From my database of medical records.

24 Q. All right. And this came from your

1 office?

2 A. Well --

3 Q. Let me hand it back to you so you can
4 explain it, please.

5 A. I mean, they came from my database that I
6 sent to them that she just gave to me today.

7 Q. When you say your database meaning -- when
8 you say "database," I'm trying to understand, is
9 that from your office, your medical office?

10 A. We're required to hold those records --

11 Q. Okay. So that came from your --

12 A. -- for a certain time.

13 Q. -- your medical office, you printed
14 them out?

15 A. That's correct.

16 Q. Okay. Thank you.

17 And this is what you relied on in
18 preparing your report?

19 A. Not alone.

20 Q. Okay. And what else did you rely on?

21 A. I relied on my education. My residency
22 training. My clinical practice training. My
23 clinical practice further education. Basically
24 further additional CME training provided by other

1 companies, i.e., Ethicon as well as further, you
2 know, up-to-date evaluation of literature.

3 Q. Thank you. With respect to medical
4 records, do you have any other medical records that
5 you relied on other than what's in what we've now
6 labeled as Exhibit No. 5?

7 A. Pertaining to Shively, no.

8 MR. KOTT: This is an in globo exhibit for
9 the entirety.

10 MS. MOORE: Thank you.

11 MR. KOTT: You put the numbers in, 1
12 through 89?

13 MS. MOORE: Yes. Thank you.

14 BY MS. MOORE:

15 Q. Now, what else have you relied on -- okay.
16 Those are the only medical records you relied on?

17 A. Those are the only medical records I have
18 for Ms. Teri Shively pertaining to my care of her.

19 Q. My question is, any and all records that
20 you've relied on in preparing your report for Ms.
21 Shively are contained in that exhibit?

22 A. If they're related to Dr. Gomelsky's
23 visit, Dr. Porter's visit, those were also relied
24 upon as well.

1 Q. And where are those records?

2 A. Okay.

3 Q. Okay.

4 A. They're not in here, but they're reflected
5 in my expert opinion and summary.

6 Q. Again, the request attached to your Notice
7 of Deposition requested for you to bring copies of
8 all the medical records --

9 A. Okay. Just --

10 Q. Doctor, one second just so we don't talk
11 over each other.

12 A. Sure.

13 Q. And I'll try to do the same for you. I
14 know it can be challenging.

15 But the request asks for documents that
16 pertain to all medical records that you relied on in
17 forming your opinion. And so you're telling us now
18 that you have additional records that you didn't
19 bring today?

20 A. They're not my records. I mean --

21 Q. Well, I'm saying you relied on additional
22 records, but you don't have them here today?

23 A. That is correct.

24 Q. And why is that?

1 A. Well, I think Ms. Mikalia commented on the
2 timing of the email and the request.

3 Q. The timing of the -- now, this deposition
4 has been scheduled and your Counsel -- I'm sorry,
5 the Herman firm has known about it for some
6 time and you're saying that you didn't get
7 notification of documents until last night?

8 A. That's when the email came.

9 MR. KOTT: I'm going to put on the record
10 at this point in time that any records that he
11 is relying on, medical records, have been
12 provided to Counsel for the defendants in this
13 matter. And I will also remind you that these
14 are requests, okay. And some of these
15 requests -- most of them, first of all, have
16 been answered and provided information to you
17 that you have in your possession. And some of
18 them are simply -- we don't feel are legally
19 appropriate for us to divulge, just for the
20 record.

21 MS. MOORE: Move to strike comments of
22 Counsel.

23 BY MS. MOORE:

24 Q. Sir, now when you were preparing for

1 today's deposition, you got -- the first time you
2 get any type of notice of what to bring is last
3 night. So you -- I guess did you expect you would
4 just show up today and -- without the information
5 you relied on and give your opinions?

6 A. Well, I'm here with my expert opinion, so
7 that's what I assumed I was here for.

8 Q. That's what you expected?

9 A. Uh-huh.

10 Q. All right. We're going to request any and
11 all records that you relied on. And that would be
12 anything in performing your opinion.

13 I did note you prepared a reliance list,
14 but the request asked for the actual documents. So
15 we'll have to try and work this out with Mr. Kott on
16 a break and then see if we can resolve this in the
17 morning. So let's keep going with the other
18 documents requested.

19 Emails, I think you said you have, but you
20 didn't bring those. So we're going to hold that
21 open as well.

22 And then how about documents with respect
23 to any videotapes or recordings that you may have
24 used at any time in preparation of your opinion?

1 A. No.

2 Q. And --

3 MR. KOTT: For clarity, are you asking if
4 he has any or if he brought any?

5 BY MS. MOORE:

6 Q. I think my -- well, both.

7 A. No.

8 Q. Thank you. And we marked your deposition
9 report, your expert report of Ms. Shively as
10 Exhibit No. 3.

11 Your other reports, do you have those
12 today?

13 A. Yes.

14 MS. MOORE: All right. Why don't we go
15 ahead -- and do you have copies of those?

16 MS. KOTT: We have Shively and Taylor.

17 MS. MOORE: All right.

18 MR. KOTT: And we will
19 provide authorization --

20 MS. MOORE: That's fine. That's fine.

21 Let's go ahead and mark Taylor as No. 6.

22 (Exhibit No. 6 marked.)

23 BY MS. MOORE:

24 Q. All right. And, Doctor, with respect to

1 the Taylor matter, can you identify for us what
2 medical records, emails, invoices you may have?

3 A. This is the information I have right here
4 that pertains to Ms. Taylor.

5 Q. And that's going to be in a binder.
6 Did you prepare that binder?

7 A. This was -- this is my printed material.
8 But did I put it in a binder, no.

9 Q. Okay. Who put it in a binder?

10 A. It was sent to me in a binder, I am assuming
11 the firm.

12 MS. MOORE: Let's mark that as in globo
13 Exhibit No. 7.

14 And, let's see, I'll read into the
15 record -- may I?

16 MR. KOTT: Yeah.

17 MS. MOORE: And it's Taylor 1 through 173.
18 That will be Exhibit No. 7.

19 (Exhibit No. 7 marked.)

20 BY MS. MOORE:

21 Q. And this particular binder has a tab
22 called "Medical Records and Bills Volume 1 of 1."
23 So this one actually includes medical records and
24 bills, that would be fair to say?

1 A. That's -- that's what it reads, yeah.

2 Q. Okay. And just so I'm clear, the medicals
3 that we looked at for Ms. Shively, are those bills
4 or just records? And that's exhibit --

5 A. Medical records.

6 Q. Just medical records?

7 MR. KOTT: May I?

8 MS. MOORE: Yes, please. Please.

9 And that's Exhibit No. 5?

10 MR. KOTT: This is No. 5.

11 MS. MOORE: So --

12 MR. KOTT: I don't see any bills.

13 MS. MOORE: So we'll ask for the medical
14 bills for Ms. Shively, as well.

15 MR. KOTT: No problem.

16 MS. MOORE: Okay. Thank you, Counsel.

17 MR. KOTT: Oh, there are no bills in that
18 one?

19 THE WITNESS: There's no bills in that
20 one, it's just medical records.

21 MS. MOORE: Okay. Thank you. Then --
22 because I was just -- again, it says "Medical
23 Records and Bills," but they're -- okay. So
24 we'll ask for copies of bills for Ms. Shively

1 and Ms. Taylor.

2 MR. KOTT: Well, we'll bring all four of
3 them. We have the bills he has. I think
4 you're entitled to them.

5 MS. MOORE: Absolutely. Thank you.

6 MR. KOTT: That's quick.

7 BY MS. MOORE:

8 Q. All right. We covered reports, we're
9 going to deal with the other two reports tomorrow.

10 No. 5 asked for any kind of testing or
11 examination that you may have done with respect to
12 any of the patients that you have treated.

13 Do you have any documentation other than
14 your medical records on examination or testing for
15 any of the patients or any of the devices, mesh in
16 question?

17 A. That would be in the medical records.

18 Q. Okay. Everything would be in the medical
19 records?

20 A. That's correct.

21 Q. Now, as you sit here today, do you have
22 any independent recollection of tests? Did you do
23 any testing on the mesh?

24 A. What do you mean by "testing on the mesh"?

1 Q. Well, what does "testing of mesh" mean to
2 you?

3 A. I mean, my job is as a physician to
4 provide clinical guidance for a patient, not to test
5 the mesh itself.

6 Q. Thank you. That helps clarify.

7 All right. So then the only information
8 you would have on any type of tests or examination
9 would be -- that which would be contained in your
10 records?

11 MR. KOTT: Objection.

12 BY MS. MOORE:

13 Q. Correct?

14 A. Everything I've got is there.

15 Q. So to answer my question, any testing that
16 you had or examination would be in the records?

17 A. Medical records.

18 Q. Thank you.

19 All right. Let's see. And then the next
20 one I'm looking at is No. 6, just, again, the
21 correspondence, emails with any -- I'm just going to
22 broaden it to any of the lawyers you've worked with,
23 any of the plaintiffs, any of the healthcare
24 providers, any communication you had with the four

1 plaintiffs, where would that -- where would those
2 communications be?

3 A. With the plaintiffs?

4 Q. Well, it's a broad question. If you want
5 to take -- yes, start with plaintiffs. Any
6 communication that you've had over the years with,
7 say, Ms. Shively?

8 A. Those -- in terms of follow-up visits,
9 those should be in the medical records.

10 Q. Okay. So any --

11 MR. KOTT: Separate from --

12 BY MS. MOORE:

13 Q. Any -- let me do it this way.

14 A. I have no other communication with them
15 outside of my clinical practice visits.

16 Q. Okay. Did you email -- strike that.

17 Have you emailed patients over the years?

18 A. No.

19 Q. What's your primary way of communicating
20 with your patients?

21 A. Face to face.

22 Q. And then document it in the records?

23 A. Immediately.

24 Q. And as you document things in the records,

1 it's important to be accurate?

2 A. Yes.

3 Q. Truthful?

4 A. Yes.

5 Q. And complete?

6 A. Yes.

7 Q. And if someone tells you something, a
8 particular symptom, that you would be as complete as
9 possible, correct?

10 A. Try to use their words when possible.

11 Q. Thank you.

12 VIDEOGRAPHER: Doctor?

13 THE WITNESS: Yes.

14 VIDEOGRAPHER: Can I get you to move your
15 mic up on your tie?

16 THE WITNESS: Yeah. My wife says I'm soft
17 spoken.

18 VIDEOGRAPHER: You are very much.

19 Much better.

20 BY MS. MOORE:

21 Q. So we covered emails. And just for
22 ease of going through this, when I'm asking about
23 emails and communications with -- that we're asking
24 for, it's any communication with each -- strike

1 that.

2 Any communication with respect to any of
3 the four plaintiffs. So it could be communication
4 with the patients, and you said the only
5 communications you had would be contained in the
6 records?

7 A. The only time I've communicated with these
8 patients is face to face.

9 Q. All right. You've never had a phone call
10 with any of them?

11 A. No, not that I recall.

12 Q. All right. Have you talked to any of
13 their healthcare providers?

14 A. Their healthcare providers, what do you
15 mean?

16 Q. Have you had an opportunity to speak to
17 any other healthcare provider about the care and
18 treatment of any of the patients involved in this
19 litigation?

20 A. If you're referencing other physicians
21 that they saw, no.

22 Q. Have you talked to any other healthcare
23 providers at all about these plaintiffs?

24 A. No.

1 Q. So with respect -- have you talked to any
2 other experts, expert healthcare providers or
3 doctors about these plaintiffs?

4 A. Talking to, no.

5 Q. Have you emailed?

6 A. No.

7 Q. Met with?

8 A. No.

9 Q. All right.

10 A. Didn't dream about them, either.

11 Q. Understood.

12 So we've got communications with the
13 plaintiff that should be in your records, if there
14 were any outside of your care and treatment. And I
15 think communication with the Herman firm would be
16 the emails that you'll be producing tomorrow?

17 MR. KOTT: No. That we will discuss
18 tomorrow.

19 MS. MOORE: Okay. We're going to -- well,
20 let's discuss that on a break today.

21 MR. KOTT: Yes.

22 MS. MOORE: Because that could alter
23 things. I'm trying to move it along, but --
24 all right.

1 BY MS. MOORE:

2 Q. So I will discuss that --

3 MR. KOTT: Yeah.

4 BY MS. MOORE:

5 Q. -- and then we'll have to get back to
6 any -- it's complicated because you're an implanter
7 and you're also an expert, so that's --

8 MR. KOTT: Kim, I didn't mean to
9 interrupt. I don't want it to be like I'm
10 agreeing to just give you all --

11 MS. MOORE: Your objection is noted.

12 BY MS. MOORE:

13 Q. That is an issue for us, given the unique
14 dual role you're playing. You're an expert, right?

15 A. Right.

16 Q. So you're working on behalf of the
17 plaintiffs, right?

18 A. Correct.

19 Q. And you're also someone who treated them?

20 A. Correct.

21 Q. And -- let's see. I think we have covered
22 any conversations.

23 Now, the literature, you did provide for
24 us in your reliance list a list of all the

1 literature and other documents that you've reviewed
2 for each of the cases; is that fair to say?

3 A. That's fair to say.

4 Q. All right. And are those reliance lists
5 were attached to -- let's see, do you have it
6 attached to the --

7 MR. KOTT: It's a separate copy.

8 MS. MOORE: Let's go ahead and attach that
9 for Ms. Shively. Ms. Shively first. That
10 will be Exhibit No. 7. And then Taylor --

11 So the record is clear, the binder that
12 was produced with respect to Charlene Taylor is
13 Exhibit No. 7. And we'll do the reliance list
14 for Shively as No. 8. And the reliance list
15 for Taylor as No. 9.

16 (Exhibit No. 8 and No. 9 marked.)

17 BY MS. MOORE:

18 Q. Now, Doctor, do you have copies of those?
19 I just want to make sure that these are current, the
20 reliance lists.

21 MS. MOORE: We're going to take just
22 today -- Counsel, we're going to just focus
23 this, we've kind of discussed, on Morrow and
24 Taylor and we'll go with the other two

1 tomorrow.

2 MR. KOTT: No, it's Shively and Taylor.

3 That's okay.

4 MS. MOORE: It's going to be a long two
5 days.

6 MR. KOTT: That's okay. We will
7 repeatedly do that ourselves.

8 MS. MOORE: Thank you.

9 BY MS. MOORE:

10 Q. All right. So with respect to Exhibit
11 No. 8, the Shively reliance -- I'll call reliance
12 list, do you have anything that you need to add to
13 this list?

14 A. The only thing, there was a -- published
15 in February, late February 2016, a Cochrane review.

16 Q. And do you have a copy of that?

17 A. I do not.

18 Q. And can you tell us the title of that,
19 please?

20 A. Can I pull out my laptop?

21 Q. Sure.

22 A. Okay.

23 MS. MOORE: Go off the record.

24 VIDEOGRAPHER: We're going off. The time

1 is 9:53 a.m.

2 (Off the record.)

3 VIDEOGRAPHER: We're back on the record.

4 The time on the camera is 9:55 a.m.

5 THE WITNESS: The title of the article is

6 "Transvaginal Mesh or Grafts Compared with

7 Native Tissue Repair for Vaginal Prolapse,"

8 Cochrane Database Systemic Review, published

9 February 2016.

10 BY MS. MOORE:

11 Q. And, Doctor, other than that Cochrane
12 review article, did you have any additional
13 references to add to either Shively No. 8 or No. 9?

14 A. No.

15 Q. And No. 10 requests the depositions you
16 reviewed, those would be contained in your reliance
17 list?

18 A. That is correct.

19 Q. All right. Any photographs or images or
20 graphics or charts?

21 A. Not that I brought.

22 Q. Well, any that you have?

23 A. No.

24 Q. Have you prepared any?

1 A. We brought some.

2 MR. KOTT: Demonstrative.

3 MS. KOTT: Demonstrative.

4 BY MS. MOORE:

5 Q. Did you prepare any demonstratives?

6 MR. KOTT: Not prepared, relied.

7 BY MS. MOORE:

8 Q. And do you have any Ethicon products in
9 your possession?

10 A. Not in my possession.

11 Q. Did you have any at any time that you
12 provided to Mr. Kott?

13 A. No.

14 Q. Since you've been retained, have you
15 had an opportunity to look at any Ethicon
16 products?

17 A. Look at them? Can you rephrase?

18 Q. Analyze.

19 A. Like analyze, personally in hand, no.

20 Q. And looking at the remaining requested
21 items on Exhibit A, did you rely on any other expert
22 reports?

23 A. To -- for my expert opinion?

24 Q. Yes, sir.

1 A. No.

2 Q. And any -- if you'll turn to -- yes, 14,
3 did you rely on any types of adverse event reports
4 or any type of publications referenced in Request
5 No. 14?

6 A. I think everything related to publications
7 is in there.

8 Q. Thank you. And I asked for a complete
9 file, and you brought your complete file
10 except for emails to the Herman firm, correct?

11 A. Correct.

12 Q. Back and forth communications?

13 A. Correct, uh-huh.

14 Q. As we sit here today, do you have an
15 independent recollection of any of the plaintiffs in
16 this matter?

17 A. I do.

18 Q. So you recall Ms. Shively?

19 A. Yes.

20 Q. And Ms. Taylor and -- Ms. Taylor?

21 A. Correct.

22 Q. Morrow?

23 A. Yes.

24 Q. And Ms. Bennett?

1 A. Correct.

2 Q. How many meetings have you had with
3 Counsel since you've been retained?

4 A. Are these meetings in person or meetings
5 otherwise?

6 Q. Good point. Both.

7 A. Okay. Meetings in person, yesterday
8 evening was our first evening in person.

9 Q. Okay.

10 A. And in terms of meetings otherwise, it's
11 periodic Skype meetings.

12 Q. Yeah. I saw that referenced in your
13 invoice, so you've had some Skype meetings.

14 Who have you worked with in this matter,
15 Mr. Kott and Ms. Kott?

16 A. Mr. Seymore. I'm sorry, Moore. Herman.

17 Q. Anyone else?

18 A. No.

19 Q. And the time it took for you to prepare
20 your report would be reflected in Exhibit No. 4?

21 A. Yes.

22 Q. And let's see. Looking to see if you've
23 specified -- I see references to Taylor, Taylor,
24 Taylor, Moore.

1 So when you have references in your
2 invoice to just expert opinion report -- for
3 example, December 4th, 2015 -- do you see that? I
4 think it's right here, sir.

5 A. Where are you?

6 Q. December 4th --

7 A. Okay.

8 Q. -- 2015. Expert opinion report?

9 A. Yes.

10 Q. What matter were you working on?

11 A. In terms of specifics of that date, it was
12 in relationship probably to general expert opinion
13 report work.

14 Q. And tell me about that. What would you do,
15 what was your process in going about preparing
16 these expert reports?

17 A. Research, writing, editing, typographical
18 errors.

19 Q. Research, writing and the usual editing?

20 A. Uh-huh.

21 Q. What research did you do?

22 A. Patients' charts.

23 Q. So you reviewed your own charts?

24 A. Correct.

1 Q. What else did you do?

2 A. Articles, journals.

3 Q. You did research to find the articles
4 referenced --

5 A. Going back all through these I already
6 had.

7 Q. Okay. All of these are articles that you
8 had?

9 A. As a part of my database.

10 Q. And do you have a database on -- describe
11 your database for me.

12 A. Just, you know, any printed out materials
13 that physicians may have to hold records, studies to
14 go back to.

15 Q. Okay. And so your database is on what
16 specific? Is it on pelvic organ prolapse?

17 A. Wide varieties.

18 Q. Such as?

19 A. Such as menopausal symptoms, such
20 gynecological care, such as atrophic vaginitis, such
21 as interstitial cystitis. Basically trying to stay
22 up to date on the medical literature as it relates
23 to gynecological care.

24 Q. Okay. So you have your own database for

1 each one. Do you have a database for pelvic organ
2 prolapse?

3 A. I have a collection, yeah --

4 Q. A collection?

5 A. Yeah. I use the word "database." I'm
6 talking about a collection of articles.

7 Q. All right. And so you have a collection.
8 Do you have a collection on mesh?

9 A. It's related. It would be a sub
10 underneath that, yes.

11 Q. And do you have a collection on Ethicon
12 products?

13 A. If -- if it was related to the mesh. I
14 don't have specifically an Ethicon.

15 Q. And I'm going to request for any and
16 all the information that you have pertaining to
17 mesh and the pelvic organ prolapse articles.

18 A. Are you talking about journals, articles?

19 Q. Well, explain to me what you have.

20 A. Well, a lot of them you just -- I have the
21 titles and I just go online and I read it, so
22 they're all online. So my database more is of the
23 titles and the authors to give me -- to be able to
24 type them back in and go to them.

1 Q. That's what I'm trying to understand. Do
2 you have them -- you had them or do you have just a
3 listing of them that you can go get?

4 A. A listing of them to go get.

5 Q. Okay. So these were articles that you had
6 the titles -- or you had various titles. You found
7 the ones that interested you and then you went and
8 read them?

9 A. Well, yes.

10 Q. Okay. All right. So it's not that you
11 have it in a database right now articles that you
12 could produce for me?

13 A. No.

14 Q. When you were asked to prepare the report
15 and before you did your research, what were you
16 asked to do? What was your objective in preparing
17 these reports?

18 A. Prepare an honest report of my assessment
19 of these clients.

20 Q. With respect to the mesh?

21 A. Just in general care.

22 Q. General care. Okay.

23 A. And if that involved mesh, yes.

24 Q. And if it didn't, you would comment on

1 that as well?

2 A. Like I said, anything that's in the
3 medical records was a part of my care for my
4 clients, my patients.

5 Q. So you said you did your research, you
6 did your writing, and then the normal editing?

7 A. Correct.

8 Q. And then what you were able to research,
9 and eventually write, are contained in Exhibits No.
10 8, No. 9 and No. 5 and No. 6, your reports?

11 A. Oh, yes.

12 Q. All right. Let's see. Let me ask you
13 about this particular book here. I'm going to hand
14 this to you.

15 Could you hold that up for us?

16 A. To the camera?

17 Q. Yeah. Thank you.

18 What is Manboob Nation?

19 A. It is a book that I self-published.

20 Q. And tell us about Manboob Nation.

21 A. It is a book for physicians. It is an
22 extensive literature review of low testosterone
23 causation in men. And out of my research in it, I
24 felt the need to put it out there, because it

1 contradicted a lot of standard practice. And there
2 are 799 references.

3 Q. Okay. What does the title mean, "Manboob
4 Nation"?

5 A. It is referencing the high estrogen
6 production from aromatase activity, from androgens
7 that accelerates breast growth in men.

8 Q. And so are you -- I'm trying to
9 understand. The title represents what your concerns
10 are, that we have a country where men have boobs?

11 MR. KOTT: Objection to the form.

12 BY MS. MOORE:

13 Q. Or breasts?

14 A. It's about low testosterone causation.
15 Causation of low testosterone.

16 Q. I'm just trying to understand the title.
17 So your title references men having breasts?

18 A. One of the issues with
19 testosterone-to-estrogen conversion, be it high
20 abdominal adiposity, so when men become overweight,
21 especially in the midsection, they increase
22 expression of aromatase, which is an enzyme that
23 will convert androstenedione to estrone and
24 testosterone, to estradiol. Those are estrogens

1 which, in excess production for men, which they
2 produce very, very small levels, will promote breast
3 growth.

4 Q. And so you were concerned about breast
5 growth in men?

6 A. I'm concerned about the causation of low
7 testosterone in men and that the literature was not
8 being followed via standard practice --

9 Q. Okay.

10 A. -- in testosterone management.

11 Q. And what does that mean, that the
12 literature was not being followed in testosterone
13 practice?

14 A. The Institute of Medicine did a report
15 in 2001. They showed that the average physician
16 practices at a level that is 17 years behind
17 the current evidence. So that's specifically my
18 reference.

19 Q. And so because you were concerned that the
20 average physician practiced 17 years behind the
21 level, you felt it was important to prepare the
22 Manboob Nation book that addressed your concerns
23 with, I guess, low testosterone in men?

24 A. It was just simply my findings, and I just

1 self-published it with the literature references.

2 So, again, it's more for physicians, in terms of
3 education and a resource for the studies.

4 Q. Okay. And have you written any other
5 books?

6 A. I have not.

7 Q. Are you in the process of writing any
8 other sequels?

9 A. Oh, there may be a thought.

10 Q. But you haven't started working on it?

11 A. No.

12 Q. Okay. And when did you start working on
13 it? I mean, when was it I guess published? I think
14 I looked at that, but I can't recall.

15 A. To be honest, I've slept since then.
16 2013.

17 Q. Okay. So when did you start writing it?

18 A. 2012.

19 Q. And how many books have you sold?

20 A. I don't know.

21 Q. Estimate?

22 A. Maybe a hundred. It's not something I
23 market.

24 Q. And how much does it sell for?

1 A. It's ten dollars, I think. Recently
2 lowered it, I can't recall.

3 Q. Have you actually presented on the book?

4 A. I have.

5 Q. And tell me about that.

6 A. I just referenced the review of the
7 literature as it relates to causation of low
8 testosterone in men.

9 Testosterone is not the cause, it's the
10 effect, i.e. stress, weight, medications, head
11 trauma, etcetera.

12 Q. So how many times have you presented on
13 Manboob Nation?

14 A. Four times.

15 Q. And when was the most recent time you
16 presented?

17 A. That would be, I think, November two years
18 ago.

19 Q. And I'm looking at a list of your
20 presentations, and it does look like you were
21 presenting at the -- what is the American Functional
22 Medical Association?

23 A. It's an organization that -- the American
24 Functional Medical Association is -- basically it's

1 an approach to medicine that is more of an
2 integrative approach to medicine rather than a
3 management.

4 Q. And so it's an organization. You're a
5 member of that organization?

6 A. I am not.

7 Q. Okay. But you were asked to present for
8 that organization?

9 A. That's correct. That's correct.

10 Q. And you've done that on a couple of
11 occasions?

12 A. Correct.

13 Q. And what's the conclusion of your book?

14 A. Well, to say there's one conclusion is
15 really not appropriate. What it is, is it's simply
16 a review of the literature, what is the causation of
17 low testosterone in men.

18 Q. And is that a focus -- obviously a focus
19 of yours?

20 A. Currently?

21 Q. Yes.

22 A. It's a part.

23 Q. Okay. What are your other current
24 focuses?

1 A. The majority of my clinical practice right
2 now is dealing with ladies.

3 Q. Okay. And when you say "dealing with
4 ladies," what does that mean?

5 A. That means it's a primary 60 percent
6 pelvic gynecological practice. It's an office-based
7 practice dealing with weight issues, dealing with
8 menopausal issues, perimenopausal, PCOS,
9 infertility, metabolic syndrome, hypertension,
10 diabetes.

11 Q. Are you doing surgery?

12 A. No.

13 Q. Why not?

14 A. Because my experience with everything
15 involved here with the mesh, I lost faith in the
16 collaboration between the businesses and physicians
17 in terms of honesty, trustworthiness of the
18 information relayed, and so I transitioned out of
19 that aspect of my practice.

20 Q. Okay. So you lost faith in the honest --
21 I'm sorry?

22 A. The ability to give us accurate
23 information as it relates to the literature. That
24 led to this book, which is I'm not going to take

1 others' word for it, I'm going to read it myself.

2 Q. Okay. Do you think that's important, for
3 a doctor to do his own work and not rely on what
4 others tell him?

5 A. Yes. I think I quoted you about
6 that Institute of Medicine, the average physician
7 doesn't read.

8 Q. But over the years, have you done that,
9 have you kind of blindly followed what you've been
10 told?

11 MR. KOTT: Object to the form.

12 BY MS. MOORE:

13 Q. Or have you taken it upon yourself to
14 read?

15 A. Taken upon myself to read.

16 Q. So with respect to no longer doing
17 surgeries, do you do any type of surgery, even
18 without mesh?

19 A. It's all office-based, no.

20 Q. And why is that? Why don't you do any
21 other types of surgery without mesh?

22 A. Because I just, again, made a move outside
23 that -- that practice. I just transitioned out of
24 the pelvic organ prolapse, urinary incontinence.

1 Q. I'm sorry, I did not mean to interrupt
2 you.

3 A. When you -- as a physician, there becomes
4 a point where you either have to decide to do some
5 surgery or no surgery.

6 Q. Okay.

7 A. And so I decided to do no surgery.

8 Q. All right. So it wasn't strictly
9 related to this concern about faith and honesty
10 from information or was it?

11 A. No, it -- it was.

12 Q. Okay. And help me understand what that
13 means. You had concerns about faith and honesty
14 with respect to information that you were receiving?

15 A. That this was a safe product.

16 Q. Okay. Now, that's specific with the TVT
17 and the Prolift?

18 A. Correct. That's what started my change.

19 Q. Okay. And now with respect to any other
20 surgeries that you were doing over the years, you
21 abandoned those, as well?

22 A. Well, I had to because just from a
23 market-based analysis -- business analysis, you
24 can't -- you can't basically continue just a limited

1 practice doing limited surgical procedures. You
2 reach a point, like I said, where you have to make
3 the decision to continue the high volume surgical
4 practice or just go office-based.

5 Q. So let me make sure I understand.
6 Because -- your practice --

7 A. The majority of my -- okay. Sorry.

8 Q. No, no, no.

9 A. I was trying to clarify.

10 Q. Yeah.

11 A. The majority of my practice was pelvic
12 floor surgery, prolapse and incontinence. And so
13 when you -- when I decided to stop those, that left
14 me with very little that I was doing, because that
15 was the majority of my surgical practice. And so at
16 that point I was left with a clinical office
17 practice.

18 Q. What surgical options are there for women
19 who need pelvic organ prolapse surgery without mesh?

20 A. There's a lot.

21 Q. Okay. And you chose not to do any of
22 those?

23 A. That's right.

24 Q. And why is that?

1 A. I just decided to make the whole move.

2 Q. Okay. So I'm trying to understand, you
3 had a concern about faith and honesty with
4 respect to --

5 A. These materials --

6 Q. These materials being?

7 A. -- hurt clients.

8 Q. Okay. And what do you mean by "these
9 materials"? You're talking about what specifically,
10 what products and how they hurt clients?

11 A. The Prolift TVT-O. And TVT -- TVT-S.

12 Q. And how do they hurt clients?

13 A. You want the whole list?

14 Q. Sure.

15 A. Okay. Pelvic pain. Dyspareunia.
16 Erosion, both vaginal and into other tissue organs;
17 i.e., rectum, i.e. bladder. Banding, ridging.

18 Q. What was the last one?

19 A. Banding, ridging.

20 Q. Okay.

21 A. Plate formation. Chronic inflammation.
22 Anxiety, depression as a result. Relationship
23 disruption. Urinary incontinence failure. Urge
24 incontinence. Urinary obstruction. Urgency,

1 frequency. Chronic UTIs. Chronic constipation.
2 Painful bowel movements. Vaginal discharge, chronic
3 vaginal bleeding. Pelvic pain. Vulvar pain.
4 Abdominal pain. Leg pain. Inguinal pain.

5 Q. What was the last one?

6 A. Inguinal.

7 Q. Okay.

8 A. Inner thighs. Just off the top of my
9 head.

10 Q. Anything else?

11 A. There's more published in the literature,
12 but just off the top of my head.

13 Q. Okay. I'm just asking what concerns you
14 had about these TVT and the Prolift hurting
15 people. Anything else?

16 A. In terms of that, the product, that's it,
17 in terms of my recollection. But there's probably
18 more in the literature, and that's with the
19 references.

20 Q. So you talked about how -- does this --
21 these concerns that you have apply to any other mesh
22 products?

23 A. Those were the primary mesh products I
24 used. I didn't use any other company's products.

1 Q. You've never used any other mesh products?

2 A. In residency I may have, but I don't
3 recall ever using other products in clinical
4 practice.

5 Q. What did you use in residency?

6 A. Oh, gosh. Gynemesh. Bard. I think Bard
7 had a product. I think it's OB Tape. So we're
8 going back a few years. So that's about what I
9 recall.

10 We used some -- again as a resident, we
11 used some fascial -- we acquired some fascia from
12 the patient and we used that. But that's not mesh.
13 So that's what I'm recalling.

14 Q. All right. And so your concerns that
15 you've articulated, are they specific to
16 Prolift and TVT or are they to all mesh products?

17 A. Those were my primary products that I
18 used.

19 Q. So -- but my question is, are they
20 specific to the Prolift and TVT or are they to all
21 mesh products?

22 A. For me, those are the products I used, so
23 I have to be specific to those products.

24 Q. And when you decided to no longer do

1 surgery because your faith -- help me understand
2 faith and honesty. What happened that led you to --
3 what did -- I'm not sure what you mean by those
4 terms, "faith and honesty."

5 A. As a physician, I felt betrayed.

6 Q. And why is that?

7 A. Because this -- these products and
8 procedures were marketed as safe, effective,
9 minimally invasive, low side effects.

10 Q. Okay. Now information is important,
11 right?

12 A. Yes.

13 Q. It's important to give accurate
14 information?

15 A. Correct.

16 Q. And important to apprise -- for example,
17 when you're dealing with a patient, it's important
18 to give that patient appropriate and accurate
19 information, right?

20 A. Correct.

21 Q. Just like you would expect to get
22 appropriate information from companies, a patient
23 would expect to get appropriate information from
24 you?

1 A. Correct.

2 Q. And have you ever heard the term "people
3 who live in glass houses shouldn't throw stones"?

4 A. I have no idea. No, I haven't heard that.

5 Q. Yeah. You haven't?

6 A. No.

7 Q. Have you ever been sued?

8 A. Have I ever been sued? I was an
9 obstetrician/gynecologist. Yes.

10 Q. What does that commentary mean, that you
11 were an obstetrician/gynecologist?

12 A. All obstetricians and gynecologists get
13 sued.

14 Q. And why is that?

15 A. Because it's a -- with obstetrics, if
16 something goes bad, everybody's move is to want to
17 blame. And it's an appropriate move. So most
18 obstetricians are sued. That's a -- that's a fact
19 as published by ACOG.

20 Q. And so if something goes wrong, most
21 people want to sue?

22 A. They want to find somebody to blame.

23 Q. And what's wrong with that?

24 A. Oh, nothing wrong with that if there's

1 something to blame.

2 Q. And if you're sued, does that mean that
3 something's wrong, that you did something wrong?

4 A. Not necessarily.

5 Q. So that you don't guarantee outcomes to
6 your patients?

7 A. I don't guarantee. I quote what the
8 literature available tells us.

9 Q. I'm sorry?

10 A. I quote what the literature available to
11 us tells us.

12 Q. The literature available. And based on --
13 you just -- what's the literature --

14 A. IFUs, you know, collaboration with
15 representatives from the company. Scientific
16 literature. My expertise, my education, etcetera.

17 Q. Okay. So you are looking big picture and
18 providing information to your patients. You're
19 relying on IFUs. That would be instructions for use
20 you may get from a manufacturer, you rely on what
21 you learn from the manufacturer, you rely on your
22 own experience, you rely on the literature --

23 A. Uh-huh.

24 Q. -- and what you learn from colleagues,

1 correct?

2 A. Correct.

3 Q. Now, that's --

4 A. And further education through CMEs and all
5 those -- yeah.

6 Q. Absolutely.

7 MR. KOTT: We've been going a little
8 better than an hour.

9 MS. MOORE: You want to take a break?

10 MR. KOTT: Ten minutes, five minutes.

11 MS. MOORE: Oh, sure.

12 MR. KOTT: You don't have a question on --
13 if you want to finish this section.

14 MS. MOORE: I do want to finish this
15 section.

16 BY MS. MOORE:

17 Q. All right. So over the years you don't
18 guarantee your results with patients, like when
19 you're doing surgery --

20 MR. KOTT: Whoa, whoa, whoa, wait. You've
21 got a question here, give him a chance.

22 THE WITNESS: Yeah. Can -- can you better
23 clarify that?

24 BY MS. MOORE:

1 Q. Absolutely.

2 When you're performing surgery, do you
3 guarantee a result?

4 A. You can't guarantee a result.

5 Q. Why not?

6 A. Every person is different.

7 Q. Well, what do you mean?

8 A. Well, if I give X treatment to you and I
9 give X treatment to her, your body is an independent
10 environment. There may be a generalization that can
11 be made about reactivity based on the literature,
12 but each one will have a unique response, i.e., you
13 have a higher inflammatory response to an implant
14 versus her because you're dealing with more chronic
15 inflammation. So your immune system is already
16 hyperactive. So then you implant a foreign device,
17 it is going to go crazy compared to somebody
18 that has a balanced immune system. Their immune
19 system will stay quiescent and will not have
20 quite the response that a person with a
21 hyperstimulated immune system will.

22 Q. And so just because someone may not get
23 the desired outcome doesn't mean that you did
24 anything wrong as a doctor and performed any

1 malpractice, correct?

2 A. Again, all I can say is we can give you
3 the best guidance in terms of counseling that we
4 have based on the literature, IFUs, experience,
5 etcetera.

6 Q. So to answer my question, if you don't get
7 your desired outcome, the patient that is, that
8 doesn't mean I should be able to sue you, the
9 doctor?

10 MR. KOTT: Well, I object to the form.

11 You can sue anybody.

12 THE WITNESS: Yeah, it's a free country.

13 BY MS. MOORE:

14 Q. It is a free country.

15 A. Yeah, so you can -- you can sue.

16 Q. That doesn't mean the doctor should be
17 found responsible, just because of a poor outcome,
18 correct?

19 A. Correct.

20 Q. A plaintiff's individual response cannot
21 be predicted, correct?

22 A. Correct.

23 Q. And that doesn't mean that mesh -- across
24 the board that mesh is defective, correct?

1 A. I think there are generalizations that can
2 be made in the literature. But in terms of exactly
3 to what degree that response may occur cannot be
4 applied uniquely and uniformly across every
5 individual. But there are generalizations that can
6 be made.

7 Q. And so just with what we were speaking to
8 a minute ago, if a patient doesn't have the desired
9 outcome, and the doctor does the best he can with
10 the material, it doesn't necessarily mean the doctor
11 or the material -- that there's anything wrong with
12 the doctor or the material, correct?

13 MR. KOTT: Object. Compound question.

14 THE WITNESS: The patient has a right to
15 sue.

16 BY MS. MOORE:

17 Q. Of course.

18 A. Yeah.

19 Q. And speaking of right to sue. You have
20 been sued for battery, correct?

21 A. What? Battery?

22 Q. Performing surgery on a patient without
23 the appropriate consent?

24 A. I'm not aware of that.

1 Q. You're not aware of that. I'm going to
2 hand you --

3 MR. KOTT: You can hand it to me first.

4 MS. MOORE: I'll hand it to the witness
5 and to you, too.

6 BY MS. MOORE:

7 Q. It was a Complaint, Sandra Dykes versus
8 Edward Kim. That doesn't ring a bell?

9 A. No.

10 MR. KOTT: Can I please see this document
11 you're referring to?

12 MS. MOORE: You will in a minute, Counsel.

13 BY MS. MOORE:

14 Q. You don't remember this lawsuit where a
15 patient sued you, Michelle Potts?

16 MR. KOTT: Don't answer any further
17 questions, until I see this document.

18 Do you want to show it to me or not?

19 MS. MOORE: I'm going to ask him based
20 on his recollection.

21 THE WITNESS: I'm going to tell you "no."

22 BY MS. MOORE:

23 Q. You don't recall?

24 A. No.

1 Q. Okay. Let me ask you about the lawsuits
2 that have been filed against you over the years.

3 MR. KOTT: Hold on one second.

4 I'm going to object to any questions or
5 any answers that are on this record in
6 reference to a lawsuit I'll be questioning about
7 momentarily named Potts, in which an inference
8 that my client had been accused of battery was
9 made, unless I can see this alleged document.
10 And I'm making -- I'll make a motion to strike.

11 BY MS. MOORE:

12 Q. You can answer.

13 A. Could you ask the -- I'm sorry.

14 MS. MOORE: Do you want to read it back,
15 please?

16 (Requested portion read.)

17 BY MS. MOORE:

18 Q. Have you had any malpractice lawsuits
19 filed against you?

20 A. Yes.

21 Q. How many?

22 A. If I remember correctly -- are we
23 including residency and clinical practice?

24 Q. Anytime. Any --

1 A. I think the answer is three.

2 Q. Okay. And tell me about those.

3 A. The -- the one in residency, I was simply
4 an intern and I was not even scrubbed and I was in
5 the room.

6 Q. Okay.

7 A. I believe there was a towel left following
8 a C-section. I mean, a -- a sponge --

9 Q. Left in the patient?

10 A. -- that was left. And I was just in the
11 room, in the operating room, not scrubbed. So I
12 believe that's the first one, if I recall that
13 correctly.

14 Q. So the first lawsuit, there was an
15 allegation that you left a lap sponge in a patient
16 during a C-section?

17 MR. KOTT: Object. Hold on a second.

18 Again, I'm going to make a motion to
19 strike any questioning or responses on these
20 suits, alleged suits, unless I'm given a copy
21 of these materials.

22 Go ahead, Doctor.

23 THE WITNESS: Okay. If that's what they
24 allege. But I was removed from the suit.

1 BY MS. MOORE:

2 Q. But my question is, were those lawsuits --
3 there was a lawsuit filed against you as a result of
4 a lap sponge --

5 A. Yeah.

6 Q. -- left in a patient during a C-section?

7 A. Yes. You can sue anybody.

8 Q. Pardon me?

9 MR. KOTT: Same objection. You don't have
10 to respond.

11 BY MS. MOORE:

12 Q. Pardon me?

13 A. Yes, if that's what it says.

14 Q. You said this is America, right, people
15 can sue?

16 A. Uh-huh.

17 Q. Okay. And then what were the other
18 lawsuits about?

19 A. There was a lawsuit related to a high risk
20 pregnancy woman that presented without attending to
21 the hospital in Louisiana, and we transported her to
22 -- the -- both surgical ORs were being used. There
23 was no staff and we had to transport her back to her
24 high risk facility in Shreveport and the baby died.

1 Q. Okay. And --

2 A. And then there was I think one recently
3 that -- talking about on a C-section, there was a
4 device that was -- that broke off that was retained
5 within the abdomen, discovered years after the fact.

6 Q. Okay. Anything else you can remember?

7 A. No.

8 Q. All right.

9 MR. KOTT: Let's take our break now
10 instead of before --

11 MS. MOORE: No, my questions are pending.
12 Questions are pending.

13 All right. If we take a break, I'm going
14 to instruct and ask that you do not talk --

15 MR. KOTT: I don't want to talk to him, I
16 want to go to the bathroom.

17 MS. MOORE: I'm going to ask that you
18 don't speak to Counsel about the pending
19 questions or the issues.

20 THE WITNESS: Can I pee?

21 MS. MOORE: You may. You may.

22 MR. KOTT: Okay. Thank you.

23 VIDEOGRAPHER: Okay. We're going off the
24 record. The time is 10:30 a.m.

1 (Off the record.)

2 VIDEOGRAPHER: Okay. We're back on the
3 record.

4 Starting disc number two. The time is
5 10:45 a.m.

6 BY MS. MOORE:

7 Q. All right. Doctor, back after a break.

8 We were talking about some of the medical
9 malpractice proceedings against you over the years,
10 and you referenced a couple for us. I'm going to
11 ask you about a few others.

12 I'm going to hand you and your Counsel a
13 Complaint by Michelle Potts.

14 MR. KOTT: Thank you.

15 MS. MOORE: And we'll make that as Exhibit
16 No. 10.

17 (Exhibit No. 10 marked.)

18 BY MS. MOORE:

19 Q. It references you and some other doctors.
20 And if you want to look at the entire document,
21 that's absolutely fine. If you are, let's
22 go off the record and look at the document.

23 MS. MOORE: We'll go off the record.

24 VIDEOGRAPHER: We're going back off the

1 record. The time is 10:46.

2 (Off the record.)

3 VIDEOGRAPHER: Okay. We're back on the

4 record. The time is 10:47.

5 BY MS. MOORE:

6 Q. Doctor, you've had a chance to look at
7 this Complaint that was filed against you in
8 the Circuit Court for Knox County, Tennessee. And
9 it appears to be a lawsuit, or the allegation
10 against you is that -- if you turn to
11 paragraph seven, that during the procedure that you
12 were performing --

13 MR. KOTT: Object to the form.

14 BY MS. MOORE:

15 Q. Doctor, if you'll read the last sentence.

16 Well, first of all, you see your name in
17 there. Let's go through that paragraph.

18 "On or about September 7th, 2001," do you
19 see that, paragraph seven?

20 A. I do.

21 Q. "The plaintiff was a patient at the
22 hospital owned and operated by," and it names a
23 bunch of defendants?

24 A. Correct.

1 Q. And it mentions you as being Nathan W.
2 Goodyear, resident physician under the control
3 and direction of said defendant, Dr. William
4 Hollis. Do you see that?

5 A. Yeah. I'm the third listed there, yes.

6 Q. Yes, you are. And it says that during --
7 the last sentence says, "During said procedure, the
8 lap sponge was left in the abdomen of the Plaintiff
9 and was undetected by x-ray, requiring additional
10 surgery for its removal"?

11 A. Yes, I read that.

12 MS. MOORE: I'm going to mark that as
13 Exhibit No. 10.

14 I'm going to also hand you what I'll mark
15 as Exhibit No. 11.

16 Again, we can go off the record if you
17 want to take a look at it, Counsel.

18 VIDEOGRAPHER: We're going off the record.
19 The time is 10:48.

20 (Off the record.)

21 (Exhibit No. 11 marked.)

22 VIDEOGRAPHER: We're back on the record.

23 The time is 10:50.

24 BY MS. MOORE:

1 Q. All right. I've handed you a Complaint
2 entitled Sandra Dykes and husband Donnie Dykes
3 versus, again, a number of defendants, including
4 yourself, in the Circuit County for Knox County,
5 Tennessee in 2005; is that fair?

6 A. That's what it reads, yes.

7 Q. And your note you just wrote? I'm trying
8 to understand the note --

9 A. Chicken scratch. It says Dr. Copas did
10 surgery, his private patient.

11 Q. Okay. So what does that mean?

12 A. It means I just held the retractor.

13 Q. Okay. So if you turn to the -- this is a
14 lawsuit against you and a number of other doctors,
15 correct?

16 A. Yes, there are several listed here,
17 correct.

18 Q. And do you remember the allegations in
19 this particular lawsuit now after having a moment to
20 refresh your recollection?

21 A. Vaguely. I believe Dr. Copas did a
22 colpocleisis on her. But I haven't had a chance to
23 read through all of it.

24 Q. And what is that?

1 A. Well, a colpocleisis is a non-mesh
2 procedure for typically severe prolapse when the
3 client -- the patient no longer desires a functional
4 vagina and you will basically close it up.

5 Q. So you did what is known as a complete
6 LeFort colpocleisis?

7 MR. KOTT: Object to the form.

8 THE WITNESS: I did not. I didn't.

9 BY MS. MOORE:

10 Q. You were involved in the surgery?

11 A. I held the retractor.

12 Q. You were named in the lawsuit?

13 A. Correct.

14 Q. And if you go further down -- so that
15 means -- is that the complete closing up of the
16 vagina?

17 A. Correct.

18 Q. And so the Plaintiff alleges that her --
19 unbeknownst to her, she had signed a consent -- a
20 Dr. Kim recommended a bladder tuck surgery.
21 Consents were signed for the transvaginal tape and
22 anterior repair. After surgery, the Plaintiff was
23 informed that Dr. Kim was not present. You were one
24 of the doctors present, and the Plaintiff learned

1 that her vagina had been sewn up and completely
2 obliterated; is that correct?

3 A. She was not my patient.

4 Q. You were part of the surgical team?

5 A. I was a retractor.

6 Q. So you were in the operating room?

7 A. I was in the operating room.

8 Q. You were in the operating field?

9 A. I was in the operating field.

10 Q. And you're named as a defendant in the
11 Complaint?

12 A. Yes.

13 Q. And if you turn to I think it is
14 allegation 37. Allegation 37, do you see that?

15 A. Thirty-seven?

16 MR. KOTT: Is it paragraph 37 or number
17 37?

18 BY MS. MOORE:

19 Q. Yes, that's fine. Number 37.

20 Do you see that?

21 A. I do.

22 Q. What is the first count?

23 A. Number 37?

24 Q. The one after that, the first count,

1 please.

2 A. Oh, battery.

3 Q. Battery. Okay.

4 And if you look down, it says that the --
5 would you read 38 into the record, please?

6 A. "The defendants, Dr. Copas, Goodyear and
7 Saguan, performed a complete colpocleisis on Ms.
8 Dykes without her knowledge, authorization, or
9 consent."

10 Q. And 39, please, 39 and 40, please
11 read that.

12 A. "Ms. Dykes did not know that there was a
13 possibility that her vagina would be sewn closed and
14 obliterated or that a complete LeFort colpocleisis
15 procedure might be contemplated, much less
16 performed."

17 And then number 40, "Ms. Dykes did not
18 authorize and would not have consented to the LeFort
19 colpocleisis procedure or closure of her vagina."

20 Q. And 41 states she did not know that you'd
21 be assisting in the surgery?

22 A. That is correct. Because we were not her
23 physicians.

24 Q. And she would not have authorized your

1 participation in her surgery?

2 A. Correct. She was a private patient of Dr.
3 Copas.

4 Q. So you performed surgery on a patient
5 without her consent?

6 MR. KOTT: Object to the form.

7 THE WITNESS: Do I answer?

8 BY MS. MOORE:

9 Q. Yes.

10 A. I did not perform it.

11 Q. You were in the surgical field?

12 A. But I did not do any of the procedures
13 other than hold this, move that.

14 Q. And you were named as a defendant for
15 participating in a surgery without the patient's
16 consent, correct?

17 MR. KOTT: Object to the form. That's an
18 allegation.

19 Go ahead and answer.

20 THE WITNESS: Correct.

21 MS. MOORE: I'm going to object to the
22 coaching.

23 MR. KOTT: I'm going to object that it's a
24 misleading question too.

1 MS. MOORE: Your witness -- you can object
2 to the form, but any commentaries, I move to
3 strike.

4 THE WITNESS: Was I in the room? Yes.

5 BY MS. MOORE:

6 Q. And you were in the operating field?

7 A. Was I in the operating field? Yes.

8 Did I do any surgical procedures? No.

9 Q. By holding a retractor you participated
10 in the surgery, correct?

11 A. Yes.

12 Q. Okay. And what exactly -- once your
13 vagina is sewn shut, are you able to have sex?

14 A. No.

15 Q. You're not able to have --

16 A. In terms of intercourse, no. Penetrating,
17 no.

18 Q. Okay. All right. And then the next one
19 I'm going to hand you, Exhibit No. 12.

20 MS. MOORE: Counsel.

21 MR. KOTT: Thank you.

22 MS. MOORE: If you want to take a look at
23 this, and we'll go off the record for a second.

24 VIDEOGRAPHER: Time is 10:55 on the

1 camera.

2 (Off the record.)

3 VIDEOGRAPHER: We're back on the record.

4 And the time is 10:58.

5 (Exhibit No. 12 marked.)

6 BY MS. MOORE:

7 Q. Okay. Doctor, we've given you an
8 opportunity to look at Exhibit No. 12, which is
9 another Complaint against you and others. It's in
10 the Circuit County for Knox County Circuit
11 Court -- strike that. Sorry. Circuit Court for
12 Knox County, Tennessee. It looks like it's
13 December 18th, 2002 by the stamp on it. It's Erin
14 R. Huskey and her husband Christopher R. Huskey,
15 again it's against you and University Health Systems
16 and others.

17 And this particular -- now that you've had
18 a chance to look at this, does it refresh your
19 recollection?

20 A. It does not.

21 Q. Okay. But you are named here as a
22 defendant?

23 A. Yes.

24 Q. And the allegation on page two, paragraph

1 seven, it says, "Dr. Rodriguez and Dr. Goodyear
2 were selected by the University of Tennessee
3 to" -- I guess missing a word to perform surgery
4 on the plaintiff -- "were the Plaintiff Erin
5 Huskey's doctors"?

6 A. No. Dr. Rodriguez was her physician.

7 Q. I'm asking you what the allegation says.

8 A. Where does that read?

9 Q. Look at seven.

10 A. Yes.

11 Q. It states that you and Dr. Rodriguez were
12 selected by the University of Tennessee to be
13 Plaintiff Erin Huskey's doctors, correct?

14 A. Well, here Dr. Rodriguez is the attending,
15 I'm just the on-call second year resident.

16 Q. And I'm asking you what the allegation
17 says.

18 A. True, the allegation says that.

19 Q. Okay. And I understand that you've
20 got a response for everything I've shown you so far,
21 but I'm asking you what the allegations say.

22 A. Okay.

23 Q. And --

24 MR. KOTT: Well, you're going to have to

1 be clear on each time. Because when you say
2 "correct" -- Kim, just listen to me one
3 minute -- when you say "correct," does it
4 mean that that the allegation is correct or
5 that you read it correct? Would you please --

6 MS. MOORE: Thank you, Counsel.

7 MR. KOTT: Thank you.

8 THE WITNESS: Because -- you're misleading
9 on here, because these were not my patients.

10 BY MS. MOORE:

11 Q. All right. My question to you is, you may
12 not have believed that they were your patients, but
13 obviously as you've told us on a couple of
14 occasions, people have a right to sue, and Ms.
15 Huskey and Mr. Huskey believed you to be their
16 doctor?

17 A. Okay.

18 Q. So if we're looking at the allegations,
19 it appears the allegation here under paragraph
20 14, I think it specifically mentions you by
21 name and "Plaintiffs allege defendants Dr.
22 Rodriguez and Dr. Goodyear, were negligent in the
23 treatment of plaintiff Erin Huskey's condition in
24 the following respects," that you negligently

1 lacerated her bladder during the laparoscopic
2 surgery?

3 A. Is that a question?

4 Q. Yes.

5 A. It -- it alleges that, but I was not the
6 operating surgeon.

7 Q. Okay. But it does make that allegation?

8 A. Correct.

9 Q. You participated in the surgery?

10 A. I scrubbed in as an assistant.

11 Q. Okay. So you were assisting in the
12 surgery?

13 A. Just like the colpocleisis.

14 Q. All right. And --

15 A. Simply there for retraction.

16 Q. And the other allegations are that the
17 laceration was not discovered in a timely manner,
18 correct?

19 A. That's an allegation, correct.

20 Q. And as a result of the negligence that
21 you performed, she had to undergo extensive
22 surgical procedures and permanent injuries?

23 MR. KOTT: Object to the form.

24 THE WITNESS: Do I answer?

1 BY MS. MOORE:

2 Q. Yes.

3 A. That's -- that's her allegation.

4 Q. Thank you.

5 All right. Now, going back to the
6 questions about malpractice lawsuits. Have you been
7 involved in any other lawsuits?

8 A. There was a -- I told you about the
9 obstetrics where the baby died.

10 Q. All right. And that was the baby that
11 died in Louisiana?

12 A. Correct.

13 Q. All right. And was there another one in
14 Louisiana?

15 A. There was -- no, not that I'm aware of.

16 Q. All right. Let me see.

17 Going back to something you said a little
18 bit ago. You're talking about faithful and truthful
19 information. You, yourself, have been accused of
20 not providing truthful information to a patient,
21 correct?

22 MR. KOTT: Object to the form.

23 THE WITNESS: Accused, correct.

24 BY MS. MOORE:

1 Q. What facts do you have to support your
2 concerns about not receiving truthful and accurate
3 information from Ethicon?

4 You're an accuser in the situation, right?

5 MR. KOTT: Object to the form.

6 THE WITNESS: Number one, minimally
7 invasive. Let me just pull out that report, my
8 expert report.

9 MS. MOORE: Let's go off the record.

10 VIDEOGRAPHER: Sure. We're going off.

11 The time is 11:03.

12 (Off the record.)

13 VIDEOGRAPHER: Time on the camera is

14 11:06.

15 BY MS. MOORE:

16 Q. All right. Do I need to repeat my
17 question?

18 A. Please.

19 Q. All right. Basically, you've told us
20 about your concerns that you've not received
21 truthful and accurate information from Ethicon; is
22 that correct?

23 A. That's correct.

24 Q. And I said in this particular instance,

1 you were like the accuser that has accused you of
2 not who accused you of not providing accurate
3 information to them. So I want to know your
4 basis for your allegations of not receiving
5 truthful or accurate information.

6 MR. KOTT: Object to the form.

7 Please go ahead and answer.

8 THE WITNESS: The -- the fact that the
9 Proloft -- Proloft -- Prolift mesh itself is
10 soft and that it was small pore -- I mean large
11 pore. The fact that it would restore sexual
12 function by restoring normal pelvic anatomy.
13 The fact that many patients would return to
14 normal daily activities within three to four
15 days.

16 BY MS. MOORE:

17 Q. Okay.

18 A. Most completely recover within a two- to
19 three-week period.

20 Q. Wait. Let me make sure I understand.

21 You're reading from your report. And what page are
22 you on, sir, if I can follow you?

23 A. I'm on page nine.

24 Q. Thank you.

1 So you're saying -- and you're looking at
2 the points under paragraph three, that you
3 believe that you have not been told accurate
4 information because the patient brochure says that
5 Prolift mesh was soft?

6 A. Not just the brochure, but the IFU as
7 well.

8 Q. Okay. And what is it about that, the fact
9 that the Prolift mesh is soft that is inaccurate or
10 misleading?

11 MR. KOTT: Wait, wait. I'm going to
12 object. Just a moment.

13 You asked for the list of all the things
14 he felt. And he's still giving his list. If
15 you want to take that question back and just
16 ask specifics, fine, but -- you do it any way
17 you want, but you had asked for the total list,
18 and I don't want to give the impression that
19 that was the entirety of the list.

20 MS. MOORE: That's fair enough, Counsel.

21 MR. KOTT: Do it the way you want to do
22 it.

23 MS. MOORE: Thank you. Thank you. I
24 appreciate that.

1 BY MS. MOORE:

2 Q. So I had asked you earlier to give me the
3 basis for your opinions about concerns with respect
4 to the truthfulness on the Prolift and the TVT
5 products.

6 A. Right.

7 Q. And so you had turned your attention to
8 paragraph three in your report, which I believe --
9 is this paragraph three in Exhibit No. 3, which is
10 the Shively report, the same paragraph that is in
11 all of your patient reports?

12 A. Well, it wasn't available. And so if it
13 wasn't available, I didn't put it there.

14 Q. Yeah. Okay. So, I mean, this paragraph
15 that we're going through now, the reasons that
16 you're concerned, this same information is laid out
17 in the other reports?

18 MR. KOTT: Yeah, the expert reports.

19 BY MS. MOORE:

20 Q. No, no, no, no. It's a confusing
21 question.

22 A. The expert report.

23 Q. All right. So now that we've clarified
24 that. You were taking me through the particular

1 concerns that you had and -- would it be fair to say
2 that those concerns are listed under paragraph
3 three, beginning on page nine, going up to the
4 conclusion of paragraph 11?

5 A. 9, 10 and 11, correct.

6 Q. Okay. All right. And we'll come back to
7 that in a few minutes.

8 Anything else other than what's laid out
9 in here that would support your concerns with
10 respect to being the accuser that --

11 MR. KOTT: Objection. Form.

12 BY MS. MOORE:

13 Q. -- Ethicon is not truthful or has not
14 provided truthful information to you?

15 A. That's what I included here, correct.

16 Q. Okay. All right. Now, have you ever
17 raised these concerns to anyone before you were
18 hired and paid by the plaintiff lawyers?

19 A. In terms of some of these potential
20 issues?

21 Q. Yes, sir.

22 A. Let me see.

23 MS. MOORE: Let's go off the record.

24 VIDEOGRAPHER: Okay. We're going off.

1 The time is 11:10.

2 (Off the record.)

3 VIDEOGRAPHER: All right. We're back on

4 the record. The time is 11:11.

5 BY MS. MOORE:

6 Q. All right, Doctor. I was asking you again
7 about the basis for your opinions that Ethicon had
8 not provided you with truthful or accurate information
9 and you pointed us to your reports.

10 A. Uh-huh.

11 Q. And I believe you were looking back there,
12 because I asked you -- one of the questions I asked
13 you, was there anything else that supports your
14 concerns?

15 A. This is -- erosion rate. The erosion rate
16 in this.

17 Q. And what do you mean by "the erosion
18 rate"?

19 A. The incidents or prevalence -- the
20 prevalence of the mesh being exposed, that's a
21 current terminology, into the vagina.

22 Q. And what was your understanding of the
23 erosion rate?

24 A. That it was low.

1 Q. And what was that based on?

2 A. Based on the literature that Ethicon
3 supplied to us through training and materials.

4 Q. And where is that literature? Can
5 you point to your reliance list and show me
6 the literature that would support --

7 A. Some of it --

8 Q. -- your concerns?

9 A. Some of it would -- for example, the
10 education, presentations that they presented to us.

11 Q. Okay.

12 A. So I don't have that.

13 Q. I want to know what you have that would
14 support your concern that Ethicon provided you
15 information on training or materials on erosion
16 rates.

17 A. Well, for example, the literature that
18 they proposed, the TVM studies out of France.

19 Q. Okay.

20 A. That was where they had the cutoff rate of
21 20 percent and they exceeded that.

22 Q. Now, what is this again? This is a --
23 what study?

24 A. The TVM study technique out of France. I

1 forget the authors, but they were some of the
2 original surgeons.

3 Q. And they told you that the erosion was
4 three to seven percent?

5 A. It was less than five percent.

6 Q. They told you it was less than five
7 percent?

8 A. Uh-huh.

9 Q. And when was that?

10 A. I don't recall the exact dates.

11 Q. Okay. Anything else?

12 A. It would have been in the educational
13 material they gave us, in the presentations and
14 conferences that they presented to us before we went
15 into the cadaver labs, etcetera.

16 Q. And what did they tell you? What exactly
17 did they tell you with respect to the erosion rate?

18 A. Been a few years ago, so I can't remember
19 specifics, but it was low.

20 Q. All right. I need you to be specific
21 because you're making a specific allegation. So to
22 the extent that you can tell us what you recall,
23 that would support this basis. If you can't recall
24 something, that's fine. But if you can tell us what

1 you're relying on, I need to know.

2 A. I cannot rely on a specific conversation
3 and a -- remember a conversation where a specific
4 number was quoted that I can recall.

5 Q. Okay. So it's just a feeling that you
6 have?

7 MR. KOTT: Object to the form.

8 THE WITNESS: It is not just a feeling.

9 BY MS. MOORE:

10 Q. Okay. What is it, then?

11 A. It is a general recollection of the -- the
12 events and the repetition of quoting it to patients.

13 Q. All right. Now, the plaintiffs that
14 have sued you relied on just a general recollection,
15 would that be fair?

16 MR. KOTT: Object to the form.

17 THE WITNESS: It could be.

18 BY MS. MOORE:

19 Q. It could be?

20 A. It could be.

21 Q. All right. Now, I want --

22 A. They may not have all the facts.

23 Q. I'm sorry?

24 A. They may not have all the facts.

1 Q. So you don't have all the facts?

2 A. I didn't say that.

3 MR. KOTT: Object to the form.

4 BY MS. MOORE:

5 Q. All right. Do you have all the --

6 A. I didn't say that.

7 Q. All right. You're an educated man, right?

8 A. Correct.

9 Q. And what time period are we talking about?

10 A. For what?

11 Q. When you didn't have the appropriate range
12 of erosion or, I'm sorry, risk of erosion?

13 A. Now ask that question again.

14 Q. Yeah. You were talking about the erosion
15 rate?

16 A. Correct.

17 Q. Three to seven percent?

18 A. Correct.

19 Q. And you have indicated to us --

20 A. This was -- this was from the beginning of
21 the launch.

22 Q. Okay. And what is the beginning?

23 A. Of Prolift.

24 Q. What is the beginning as far as the time?

1 A. Prolift was launched in 2005.

2 Q. So you're saying --

3 A. 2006. I can't remember the exact launch
4 date. But I know I was the second class there.

5 Q. All right. Prolift and then TVT?

6 A. TVT was already on the market, the TVT
7 traditional. The TVT-O came on prior to the
8 Prolift, very close to the launch of that.

9 Q. So what I need you to do, if you can, is
10 tell me exactly what you are referring that would
11 substantiate your belief, or your opinion rather,
12 that Ethicon had information about higher erosion
13 rates in the what, what time period are we talking
14 about, 2005?

15 A. What I'm -- what I'm quoting you on the
16 less than five percent is the erosion rates that
17 they told us we would see based on the studies,
18 which the study they would present to us was that
19 TVM study out of France.

20 Q. Okay. Anything else besides that TVM
21 study out of France?

22 A. There was a -- there was a Salt Lake City
23 roundtable of experts, that they told us that the
24 erosion rates were actually less than five percent.

1 The experts said --

2 Q. Who are "they"? I'm sorry to interrupt
3 you.

4 A. Yeah. I cannot recall.

5 Q. Okay. So you took that to the
6 bank, what they told you, you disregarded your
7 own --

8 MR. KOTT: Object to the form.

9 BY MS. MOORE:

10 Q. -- experience and knowledge and just
11 believed solely on what Ethicon told you?

12 MR. KOTT: Object to the form.

13 THE WITNESS: Do I answer?

14 MR. KOTT: Yeah.

15 THE WITNESS: Okay.

16 BY MS. MOORE:

17 Q. I'll rephrase.

18 You believed whatever Ethicon told you and
19 didn't do any independent research?

20 A. We did not. In fact, those of us around
21 there questioned that.

22 Q. So you questioned that?

23 A. Amongst ourselves.

24 Q. But decided to put it in your

1 consent forms anyway?

2 MR. KOTT: Object to the form.

3 THE WITNESS: Put what into the consent

4 forms?

5 BY MS. MOORE:

6 Q. The erosion rates. You said three to

7 seven percent?

8 A. Correct.

9 Well, I -- no, I didn't say that. You
10 said that. I said five percent or less.

11 Q. I think your consent forms say --

12 A. Okay. So -- okay.

13 Q. Okay. Am I right? What do your consent
14 forms say?

15 A. If you say that's on my consent form --

16 Q. We'll get to that.

17 A. Okay.

18 MR. KOTT: Wait until you see the
19 document.

20 MS. MOORE: Well, let's see. Hand me one
21 of the consent forms.

22 MR. KOTT: I mean, I don't -- you can get
23 to it what you want. I just don't want him
24 guessing.

1 BY MS. MOORE:

2 Q. No, no, that's fair. But my point is you
3 questioned what they were telling you about the
4 erosion?

5 A. As being accurate.

6 Q. And --

7 A. Because none of us around there, which had
8 a high degree of surgical volume of these
9 procedures, were coming close to that erosion rate
10 that was quoted to us.

11 Q. So were you seeing higher erosion rates?

12 A. All of us were.

13 Q. Name some of the other doctors that were
14 there with you.

15 A. I cannot recall those names.

16 Q. So you can't recall the names and you
17 can't recall the studies?

18 A. Well, I told you the studies.

19 Q. You just mentioned one.

20 A. Yeah, that's the study.

21 Q. That's the only study?

22 A. That's pretty much the one they would give
23 us, for Prolift.

24 Q. For Prolift.

1 Okay. What about for TVT?

2 A. Well, I thought we were talking about
3 Prolift here.

4 Q. You know what, that's a good point, too.
5 It's going to be challenging as we go forward
6 because we've got to cover TVT and Prolift. So I'm
7 asking you right now for your information on both.
8 And if you want to tell me TVT first and then
9 Prolift, however it's best for you.

10 A. Prolift, TVT, the erosion rates were
11 quoted as lower. But because it's typically a
12 combined procedure, both involving mesh, you would
13 still use the same range.

14 Q. Okay. Because you were the one that
15 separated it now, but you're saying --

16 MR. KOTT: Object to the form.

17 THE WITNESS: Well, one can be a
18 standalone procedure.

19 BY MS. MOORE:

20 Q. Right. And let's talk about them. I
21 think in all these cases the Prolift and the TVT are
22 used?

23 A. Not -- not -- well, there may be a
24 posterior Prolift with a TVT-O, but maybe not

1 necessarily an anterior Prolift with a TVT-O.

2 Q. The two products, we'll go through them in
3 detail. But let's just say for right now, I'm
4 trying to understand the basis for your opinion that
5 you were sitting around with some other doctors who
6 had concerns because your erosion rates were higher
7 than what you were being told by the company?

8 A. Right. And your question is?

9 Q. You don't recall any of the doctors'
10 names?

11 A. No.

12 Q. Do you know where they're from?

13 A. No.

14 Q. Okay. But at this point in time you were
15 having higher erosion rates?

16 A. Correct.

17 Q. And what were your erosion rates?

18 A. My erosion rates were exceeding 15 to
19 20 percent.

20 Q. Okay. And what time period are we in?

21 A. Well, in reference to that particular
22 roundtable, we're talking 2007. Salt Lake City.

23 Q. Okay.

24 A. Fall, October 2007.

1 Q. Okay. And so it was your own experience
2 that there were higher erosion rates than what
3 you were being told by the company?

4 A. Correct.

5 Q. And that was what you were hearing from
6 the colleagues there as well?

7 A. Correct.

8 Q. How long had you been seeing those types
9 of erosion rates?

10 A. Within probably the previous six months.

11 Q. Okay. All right. Anything else other
12 than what's listed in paragraph three of your
13 report, beginning on page nine of Exhibit No. 3, and
14 the erosion rates you just discussed that would be
15 supporting your concerns about lack of accuracy or
16 truthfulness?

17 A. The limited nature of the pelvic pain
18 postoperatively.

19 Q. Okay. All right. So they told you the
20 pelvic pain was limited?

21 A. It was minimal.

22 Q. That's what --

23 A. That's what they said, uh-huh.

24 Q. Okay.

1 A. In fact, they said complete recovery
2 within -- I think it said within two to three weeks.

3 Q. And what was your experience?

4 A. Six weeks or longer.

5 Q. Okay.

6 A. The -- and I have the references. The
7 disruptive anatomy of the vagina.

8 Q. Yeah. Well, let's see. If it's referenced
9 in here --

10 A. Okay.

11 Q. -- we don't need to go through it again.

12 A. Okay.

13 Q. We're going to tackle that in a bit.

14 A. Okay, okay.

15 Q. But if it's not in your paragraph three, I
16 want you to tell me about it.

17 A. Okay. Yeah, okay.

18 Q. We covered so far?

19 A. Yes.

20 Q. Okay. Good. All right.

21 All right. Now, let's talk a little bit
22 about your training and your experience.

23 You're no longer licensed in Louisiana?

24 A. We moved.

1 Q. Okay. But are you licensed in Louisiana?

2 A. No.

3 Q. And why did you move to Tennessee?

4 A. Because we enjoy the weather, our church
5 home is here, we have good friends here. We love
6 East Tennessee.

7 Q. Okay.

8 A. And we love the Vols. Got to interject.

9 Q. We're Peyton Manning fans.

10 A. Oh, there you go.

11 Q. So all good.

12 A. Archie. Great, great family.

13 Q. We were driving around looking for his
14 home last night. I'm kidding.

15 MR. KOTT: Oh, God. You're kidding me?

16 MS. MOORE: I'm kidding. We talked about
17 it, though. Strike all comments about Peyton
18 Manning.

19 Off the record.

20 THE WITNESS: He's got billboards
21 everywhere, so...

22 MS. MOORE: Why?

23 MR. KOTT: He promotes. He's paid to
24 promote products here big time.

1 MS. MOORE: Oh, we're not on the record,
2 are we, about that?

3 VIDEOGRAPHER: Yes.

4 MS. MOORE: I need my ten seconds back.
5 Back on the record.

6 BY MS. MOORE:

7 Q. Let's see. All right. Tell me briefly
8 your educational background. It looks like you
9 went to med school in Tennessee?

10 A. Yeah, I went to medical school at
11 Louisiana -- LSU, Shreveport.

12 Q. Okay.

13 A. Then I went and did residency four years
14 of OB/GYN residency, University of Tennessee
15 Knoxville.

16 Q. Okay.

17 A. Then went to two years private practice
18 OB/GYN in Columbus, Georgia. And then left there in
19 2006 and went to private practice in Ruston,
20 Louisiana, and then moved up here in 2013.

21 Q. All right. Have you done any additional
22 fellowships?

23 A. I did a fellowship in metabolic medicine,
24 yes.

1 Q. And where was that done?

2 A. That was basically a course -- a traveling
3 course where we would travel and every few months go
4 to three, four intensive days that we would take
5 classes there, classes online at home, and then
6 basically take our boards thereafter.

7 Q. So that was an anti-aging fellowship?

8 A. Yeah. Actually, I think it's called
9 functional rejuvenative medicine.

10 Q. And that was in October of 2009 to
11 October 2011?

12 A. Correct.

13 Q. And you said it's an online program?

14 A. Yeah.

15 Q. And tell me about the A4M, what does that
16 mean? I think it's -- do you know what I'm
17 referencing?

18 A. The forearm?

19 Q. Yeah. The A4 -- it's the --

20 A. Where are you seeing that?

21 MS. KOTT: Do you have an exhibit for him?

22 MS. MOORE: I will in a minute, Counsel.

23 BY MS. MOORE:

24 Q. Yeah, I can go to the -- we'll come to

1 that in a minute.

2 You did your fellowship, though, and you
3 received a fellowship in what specialty?

4 A. Functional rejuvenative medicine.
5 Anti-aging rejuvenative medicine.

6 Q. What is that?

7 A. It's the name they gave to fellowship for
8 functional, or as I described earlier, integrative
9 medicine.

10 Q. Okay. And have you done any -- you're
11 actually in the process of getting your MS in
12 functional and rejuvenative medicine?

13 A. Correct.

14 Q. And where are you along in that process?

15 A. Three-quarter's of the way.

16 Q. When do you expect to have your Master's?

17 A. A lot of that depends on when they get the
18 courses, you know, how they fall, so I hope within
19 the year.

20 Q. All right. Fair to say that's your
21 interest?

22 A. Yes.

23 Q. And that's kind of what you hold out to
24 the world in your LinkedIn page as your interest?

1 A. Currently, yes.

2 Q. It's like your focus now has really turned
3 towards the -- how would you describe it, the -- not
4 the --

5 MR. KOTT: I'm waiting until you finish.

6 BY MS. MOORE:

7 Q. Okay. Your focus now has turned towards,
8 I want to use the right term. Would it be
9 fair to say anti-aging or rejuvenative medicine?

10 MR. KOTT: Object to the form.

11 THE WITNESS: Preventative.

12 BY MS. MOORE:

13 Q. Preventative, okay. But your current
14 focus is preventative medicine?

15 A. Correct.

16 MR. KOTT: Objection to the form.

17 BY MS. MOORE:

18 Q. And what is your current focus of
19 medicine?

20 A. Didn't I just answer that?

21 Q. Yeah, but I just --

22 MR. KOTT: She wants to make a question
23 into a non-leading question.

24 MS. MOORE: I can lead, you're an expert

1 and an implanter, by the way. But nonetheless,
2 you can answer.

3 THE WITNESS: Preventative.

4 BY MS. MOORE:

5 Q. All right. And what exactly --
6 preventative is the -- you're studying these courses
7 and you need your fellowship and now you're trying
8 to get -- not trying, you will, I assume, get your
9 Master's?

10 A. Correct.

11 Q. And is that an online program at the
12 University of South Florida?

13 A. It is.

14 Q. All right. And so that makes sense then
15 when I saw your LinkedIn page where you kind of talk
16 about your focus. And I'll give you a copy of that.

17 MS. MOORE: This will now be Exhibit No.

18 13.

19 (Exhibit No. 13 marked.)

20 BY MS. MOORE:

21 Q. And, Doctor, let's just go through
22 briefly. Your summary, is that something that you
23 have prepared?

24 A. Yes, it's something I wrote.

1 Q. It references that you're the founder,
2 co-owner, and lead physician at Seasons in Farragut,
3 Tennessee?

4 A. Correct.

5 Q. Did I pronounce that right?

6 A. You did.

7 Q. All right. Your passion for wellness
8 began with your own 100-pound post-football career
9 weight loss. Congratulations.

10 A. Thank you.

11 Q. "Dr. Goodyear is dedicated to offering the
12 latest advancements in Wellness medicine with the
13 most holistic approach to treatment possible based
14 in science. Dr. Goodyear's passion for Wellness
15 extends beyond his clients, to helping his fellow
16 physicians and medical practitioners enjoy the same
17 Wellness medicine."

18 So it's fair to say this is your passion
19 now?

20 A. Correct.

21 Q. And then it goes on to cite your
22 background that we've talked about. And then it
23 talks about your book. We've discussed your book.
24 And then it goes down into your experience, correct?

1 A. Yes, as a speaker.

2 Q. As a speaker.

3 Tell me what that means, as a speaker.

4 What are you speaking on?

5 A. They call me and ask me to speak.

6 Q. Okay. And help me out. When people call
7 you, what do they want you to speak on?

8 A. Well, for example, we read your book, we
9 want you to come speak on your book.

10 Q. Fair. Okay. And so when you go speak --
11 it says you've spoken at numerous conferences and
12 symposiums?

13 A. Correct.

14 Q. And that you're "providing health and
15 wellness through Season's 5 points of wellness:
16 Nutrition, Exercise, Hormone Balance, Inflammation
17 Control, and Detoxification. All provided in an
18 individualized and custom wellness approach."

19 A. Correct.

20 Q. So that's your niche, your focus right
21 now?

22 A. Correct.

23 Q. All right. And then you presented at --
24 this specialty at various conferences, it looks

1 like, over the last couple of years beginning in
2 2011 in Orlando. Take a look at that.

3 A. Yeah. On the second page it didn't print
4 out well, so -- but, yeah.

5 Q. So you've presented, it looks like, on the
6 topic of the book, Manboob Nation, about an
7 integrative model for low testosterone. And then
8 you've also spoke on --

9 A. Again, I can't see it. It didn't print
10 out well.

11 Q. Oh, I'm sorry. I apologize. I'll give
12 you my copy. Here you go. I apologize.

13 Just looking at some of the other
14 conferences where you've presented.

15 A. Yeah, it even cuts off here, I think.

16 Q. What is A4M? That's what I was trying to
17 remember a few minutes ago.

18 A. You know, I'm not sure what those acronyms
19 stand for. I think they call it anti-aging
20 medicine, but they -- they actually call it
21 functional medicine rejuvenative.

22 Q. It says the American Academy of Anti-Aging
23 Medicine?

24 A. Yes.

1 Q. So you were speaking at their conferences?

2 A. Right.

3 Q. Okay. Would it be fair to say that the
4 field of anti-aging medicine is not recognized by
5 established medical organizations such as the
6 American Board of Medical Specialty and the American
7 Medical Association, the AMA?

8 MR. KOTT: Object to the form.

9 THE WITNESS: I guess they don't.

10 BY MS. MOORE:

11 Q. And why is that?

12 A. Because you said it.

13 MR. KOTT: Doctor, don't guess, please.

14 THE WITNESS: Okay. I'm sorry.

15 MR. KOTT: If you know the answer, give
16 it. If you don't know the answer, don't give
17 it. Don't guess.

18 THE WITNESS: Okay.

19 BY MS. MOORE:

20 Q. And are you aware that the activities of
21 the organization, the American Academy of Anti-Aging
22 Medicine, have been challenged and called
23 controversial in the scientific community?

24 MR. KOTT: Object to the form.

1 THE WITNESS: I am aware.

2 BY MS. MOORE:

3 Q. And why is that?

4 A. You're changing dogma, you're challenging
5 science. You're changing the way things have always
6 been done, but you're using the literature to
7 support you.

8 Q. So when you say that you're challenging
9 dogma, why is this whole area controversial?

10 A. Because you're asking for change based on
11 science. The way things have been done for 20 years
12 may need to be slightly adjusted based on new
13 knowledge, i.e., the world's not flat, we now know
14 it to be round.

15 Q. And have you -- are you familiar with the
16 allegations that advocates on behalf of the
17 anti-aging organization have reacted to such
18 criticism that you've just talked about as saying
19 it's a conspiracy perpetuated by the U.S. government
20 and the FDA?

21 A. I'm not aware of that allegation.

22 Q. So there is some question in the
23 scientific community about the legitimacy of the
24 anti-aging medicine that you're exploring, correct?

1 A. The organization, correct.

2 Q. And the medicines themselves?

3 A. No.

4 Q. You would disagree with the concept that
5 there is some controversy associated with anti-aging
6 medicines?

7 A. You referenced the medicines. I'm
8 referencing the organization.

9 Q. Okay. And, yeah, my question is with
10 respect to the medicine. You've already answered
11 that there is controversy with the organization?

12 A. There's always controversy in science.

13 Q. Exactly.

14 A. There's always disagreements.

15 Q. Okay. Good point.

16 But my question to you is, are you aware
17 of the controversy associated with the anti-aging
18 medicine, the controversies in science?

19 A. Well, you're referencing medicines
20 broadly. Can you clarify that?

21 Q. Anti-aging medicines.

22 A. I don't use that term.

23 Q. What term do you use?

24 A. For example, you're deficient in Vitamin

1 D.

2 Q. Okay.

3 A. You need Vitamin D.

4 Q. Okay.

5 A. You're low in DHEA. That's hormones. You
6 need DHEA.

7 Q. All right. So any of the concepts --
8 strike that.

9 The techniques and the medicines that you
10 use and the treatment of patients in the anti-aging
11 spectrum have been known to be controversial,
12 correct?

13 A. What I mentioned, the Vitamin D, the DHEA,
14 the low testosterone, as you see in the records and
15 the book, it's scientifically validated.

16 Q. But there are some criticisms about some
17 of the techniques in medicine as being controversial?

18 A. Yes.

19 Q. Fair enough?

20 A. Fair enough.

21 Q. What memberships and professional
22 organizations, I think you're a member of the
23 Tourism Observatory for Health, Wellness and Spa;
24 Global Wellness; Seasons WC.

1 A. I don't know about that.

2 Q. I think this came from your LinkedIn
3 profile.

4 A. Okay.

5 Q. Let's turn back to that. That would
6 probably help.

7 A. Where do you see that?

8 Q. Let's go through -- under -- let's keep
9 going down under your skills.

10 A. Okay.

11 Q. Let's go there for a moment.

12 Skills on page two.

13 A. Uh-huh.

14 Q. These are skills that you selected to
15 highlight for your LinkedIn page?

16 A. Correct.

17 Q. This is a current LinkedIn page?

18 A. Well, I guess depending on when you
19 printed it out, but yeah.

20 Q. Now, how does it look -- does it look
21 current to you?

22 A. It looks current.

23 Q. Anything you want to edit or update?

24 A. No. It looks close.

1 Q. Okay. Now, let's look at the skills that
2 you've highlighted, right?

3 A. Uh-huh.

4 Q. It says nutrition?

5 A. Yes.

6 Q. Wellness, health -- I'm just going to read
7 them, and if I misspeak, please stop me.

8 A. Okay.

9 Q. Nutrition, wellness, healthcare, social
10 media, advertising, social media marketing, public
11 speaking, marketing strategy, board certified,
12 online marketing, preventative medicine,
13 entrepreneurship, detoxification, aesthetics,
14 health, business strategy, start-ups, prevention,
15 creative direction, management, medical management,
16 change, management consulting, creative development,
17 utilization management, media planning, patient
18 safety, graphic design, integrated marketing,
19 naturopathy, writing, research, published author,
20 holistic health.

21 Those are the skills that you've
22 highlighted?

23 A. I didn't highlight those. People actually
24 post those.

1 Q. Okay. But you accepted these, you didn't
2 delete them?

3 A. I don't have any --

4 Q. You can delete things from your LinkedIn
5 page?

6 MR. KOTT: Object to the form.

7 BY MS. MOORE:

8 Q. Did you delete these?

9 A. No.

10 Q. Okay. And these are skills that you hold
11 yourself out to have? Would you agree with the
12 skills that are listed here?

13 A. I will.

14 Q. Okay. And you mentioned your
15 certification again as a fellow in metabolic and
16 nutritional medicine?

17 A. Is that a question?

18 Q. No, I'm sorry.

19 And then it goes on to one of the
20 Recommendations says you are recommended as "Dr.
21 Goodyear" -- on page three -- "has an impressive
22 state-of-the-art Wellness Clinic. He is passionate
23 about finding the best treatments for his patients,
24 brilliant about studying," and it goes on.

1 So you're getting good feedback from, it
2 looks like, some of your LinkedIn members; is that
3 fair to say?

4 A. That's fair to say.

5 Q. About what you would call your passion?

6 A. My current passion, yes.

7 Q. And is it fair to say that in your
8 LinkedIn page, that there is no reference here to
9 any gynecological or urological treatments?

10 A. It was set up in 2011, post doing those
11 procedures.

12 Q. Okay. All right. So at post 2011, your
13 focus shifted to the wellness and to the
14 preventative medicine that you referenced in your
15 LinkedIn profile?

16 A. I mentioned that in the transition process
17 that we talked about earlier.

18 Q. Okay. All right.

19 MR. KOTT: Two hours.

20 MS. MOORE: We've been going two hours?

21 MR. KOTT: It's a good time to stop. You
22 offered a document. Just finish the document.

23 MS. MOORE: Hold on one second.

24 Has it been going another hour since

1 our last break?

2 We need a break. Absolutely. We'll take
3 a break. No problem.

4 VIDEOGRAPHER: Okay. We're going off the
5 record. The time is 11:39.

6 (Off the record.)

7 VIDEOGRAPHER: Okay. We're back on the
8 record. The time is 11:48.

9 BY MS. MOORE:

10 Q. All right. Now --

11 MR. KOTT: You realize you haven't gotten
12 to one case specific --

13 MS. MOORE: Go off the record for a
14 second.

15 MR. KOTT: Go off the record.

16 VIDEOGRAPHER: Hang on.

17 (Off the record.)

18 VIDEOGRAPHER: Okay. We're back on the
19 record. The time is 11:49.

20 BY MS. MOORE:

21 Q. All right. Let's see.

22 Now, total, how many Ethicon products have
23 you implanted? How many Prolifts over the years?

24 A. That's a rough estimate. A lot.

1 Q. 100, 200, 300?

2 A. Above -- if you're including Prolift,
3 Gynemesh, TVT, TVT-O, TVT-S, over 200.

4 Q. Okay.

5 A. Probably maybe over 300.

6 Q. Total?

7 A. Over 300 --

8 Q. Okay.

9 A. -- if we start to include individual.

10 Q. That would include the Prolift and the
11 TVT?

12 A. The different varieties of TVTs, the
13 Gynemesh, etcetera.

14 Q. All right. Now, over the years, who was
15 the main sales rep that you dealt with, or just the
16 salesperson?

17 A. There was a lady in Georgia. There was
18 actually an ex-Tennessee football player when I was
19 in residency --

20 Q. She was?

21 A. No, an ex-football player was the TVT rep
22 when I was a resident. I don't recall his name.

23 There was a lady that was a rep when I was in

24 Georgia, I don't recall her name. And then there

1 was a gentleman when I was in Louisiana, again,
2 don't recall his name.

3 Q. Now, did these individuals ever mislead
4 you?

5 A. I don't know.

6 Q. Okay. I'm just trying to -- if you had
7 concerns or that they misled you in any way?

8 A. There was information that I started to
9 question.

10 Q. Okay. So did you ask them about the
11 information?

12 A. I asked them about some of the
13 complications that I was having, yes.

14 Q. And tell me about those complications.
15 Erosion?

16 A. The erosion.

17 Q. And this is, again, just so I -- we're
18 going back to the time you were at that conference
19 in Salt Lake --

20 A. Uh-huh.

21 Q. -- and you were being told that the
22 erosion rates were less than five percent at that
23 conference, correct?

24 A. That's correct.

1 Q. And that's by the company, by the
2 Ethicon group?

3 A. That was by the people directing the
4 meetings, the roundtables.

5 Q. Individuals from Ethicon?

6 A. Correct.

7 Q. This time frame, again, was in the 2005
8 time period?

9 A. The meeting?

10 Q. Yes.

11 A. No, 2007.

12 Q. You did say that. 2007.

13 And you took issue with some of what they
14 were saying and discussed that with some of your
15 other colleagues?

16 A. Yes, correct, several of us took issues
17 with it.

18 Q. Because your erosion rates were higher?

19 A. Correct.

20 Q. And you'd been seeing this for about, I
21 think you said, six months before the time you
22 appeared at that meeting in 2007?

23 A. You asked for an estimate, so I --

24 Q. Yeah, that's fair.

1 Okay. So back to my questions about the
2 reps. Just I wondered if you had any specific
3 allegations about any of the reps that you dealt
4 with doing something that was inappropriate or
5 misleading you?

6 A. Specific, no.

7 Q. Okay. But you did from time to time
8 challenge them? If they told you something,
9 you'd challenge them?

10 A. Yes.

11 Q. And, for example, with erosion, and how
12 did they respond?

13 A. So, for example, I can briefly vaguely
14 remember a conversation where, say, okay, I remember
15 him saying the erosion rates were X. My erosion
16 rates seemed to be running higher. What am I doing
17 through my surgical procedure that may do that? He
18 said, "Nothing. We send physicians to you to
19 train."

20 Q. Okay.

21 A. So --

22 Q. All right. Now, you talked about around
23 300 Ethicon procedures that you've done over the
24 years?

1 A. Just --

2 Q. Approximately?

3 A. It's probably higher if you include
4 residency in there. I was sticking at clinical.

5 Q. That's fair. And how many of these were
6 you -- in how many of those 300 have you had
7 complications?

8 A. That's -- that's hard to say.

9 Q. Okay.

10 A. Because if they didn't follow up, I don't
11 know.

12 Q. Okay. Based on those who followed up?

13 A. Based on those who followed up that I'm
14 aware of?

15 Q. Yes, sir.

16 A. Okay. Well, what's your definition of a
17 complication?

18 Q. That's a good question. What is your --
19 let's say complication. Let's say erosion.

20 A. As I told you, it's about 15 to
21 20 percent.

22 Q. And this is, again, in what time period?

23 A. Basically from really starting in two --
24 talked about 2006 sometime and beyond.

1 Q. All right. And then any other -- let's
2 see.

3 Did you keep track of these complications,
4 talking about the erosion right now?

5 A. I told the rep about them.

6 Q. But did you internally -- do you have any
7 kind of documentation or objective data that would
8 verify that?

9 A. That's what the medical charts are for.

10 Q. Right. Aside from your medical charts, do
11 you have any compilation of the data where you've
12 had a 15 to 20 percent erosion rate beginning in the
13 2006 time period?

14 A. I didn't do an IRB-approved study, no.

15 Q. Even outside of an IRB, do you just have
16 some data that you collected?

17 A. No, I just reported and let them --

18 Q. And you said "reported." Did you file
19 adverse event reports?

20 A. No, I'd just tell the rep about it.

21 Q. Just told the rep.

22 Are you aware of any other patients that
23 have filed lawsuits against Ethicon other than the
24 four patients in this matter?

1 A. Other patients that have filed?

2 Q. Yes, sir.

3 A. I see the TV ads, so I assume, but I don't
4 know any specifics.

5 Q. All right. And you're not a regulatory
6 expert, correct?

7 A. Clarify "regulatory."

8 Q. FDA expert.

9 A. No.

10 Q. And I'm going to go through a series of
11 things and see if -- your thoughts on your expertise
12 in that area.

13 You're not a biomaterials expert, correct?

14 A. Correct.

15 Q. You are not an expert in polymer science?

16 A. Correct.

17 Q. You're not an expert in manufacturing?

18 A. Correct.

19 Q. Or bioengineering?

20 A. Correct.

21 Q. You're not a design expert in the design
22 of mesh pelvic organ prolapse products?

23 A. Correct.

24 Q. I asked about testing of mesh.

1 Have you done anything to kind of quantify
2 the rates of, say, for example, shrinkage?

3 A. No, I have not.

4 Q. Have you done any measurements, I guess
5 that falls under quantification, any measurements
6 before or after implantation of the mesh products?

7 A. Not of the mesh products, no.

8 Q. Now, let's talk about, again, going back
9 to your report, getting to Shively. What kind of
10 information do you rely on in rendering an
11 opinion? You rely on obviously your experience and
12 treatment?

13 A. My training, my education. My clinical
14 experience. The experience and communication with
15 other experts in the field. The IFUs. There's
16 published literature up and available to that point.

17 Q. Okay. And, obviously, then you rely on
18 the patient, the history they gave you?

19 A. Correct.

20 Q. And your physical exam?

21 A. Correct.

22 Q. And test results?

23 A. Correct. It's a part of the assessment.

24 Q. Did you receive any materials from The

1 Herman Law Firm? Did they suggest to you that you
2 review any particular materials in your rendering of
3 opinions in these four cases?

4 A. Not -- no.

5 Q. With respect to company documents, you
6 selected those company documents?

7 A. Talking about the IFUs, those were
8 presented to me.

9 Q. Okay. That's what I'm trying to ask.

10 A. Okay.

11 Q. How did you get any company documents,
12 how did you get them?

13 A. I received them from -- yes.

14 Q. Okay. That's what I'm trying to
15 understand.

16 What did you -- obviously your experience
17 comes from within?

18 A. But you've asked two questions.

19 Q. Okay. There you go. Help me out.

20 A. Well, you asked the question regarding to
21 other expert depositions or other opinions. Now
22 you're asking about documents. I'm referencing
23 IFUs, marketing material, etcetera. So which are we
24 talking about?

1 Q. Both.

2 A. Okay.

3 Q. So let's start with the company documents
4 first.

5 A. Yes, I did receive those.

6 Q. Okay. And exactly what did you receive
7 from The Herman Law Firm?

8 A. The IFUs, the published marketing ads and
9 pamphlets that we would have in the office,
10 etcetera. So that's what I received.

11 Q. Now, how did they know what documents you
12 had in the office?

13 MR. KOTT: Object to the form.

14 BY MS. MOORE:

15 Q. How did The Herman Law Firm know what
16 documents you had in your office?

17 MR. KOTT: Object to the form.

18 THE WITNESS: I didn't. And they didn't.

19 They were just the available marketing material
20 at that time.

21 BY MS. MOORE:

22 Q. So you can't sit here and say exactly
23 what documentation you had in your office?

24 MR. KOTT: Object to the form.

1 Go ahead.

2 THE WITNESS: Yeah, I can.

3 BY MS. MOORE:

4 Q. Okay. What documentation was that?

5 A. It was the brochures for the Prolift and
6 the TVT.

7 Q. Okay. So it's your testimony that you
8 had all of the brochures for the TVT and the
9 Prolift in your office?

10 MR. KOTT: Object to the form.

11 Go ahead, Doctor.

12 THE WITNESS: I had the ones that were
13 commercially available at that time that had
14 the speed skater in it, or -- no, she was the
15 ice skate -- oh, what's her name, yeah. I had
16 the ones that were available.

17 BY MS. MOORE:

18 Q. Okay. And the plaintiffs' lawyers sent
19 you the remaining company documents for your review?

20 MR. KOTT: Object to form.

21 THE WITNESS: Correct.

22 BY MS. MOORE:

23 Q. Let's see. Let's turn to the Shively
24 report, which I believe is Exhibit No. 3.

1 All right. And let's go through --

2 MR. KOTT: You want to give him a chance
3 to go through it? Go off for a minute?

4 MS. MOORE: Absolutely.

5 THE WITNESS: Sure.

6 MR. KOTT: Just so I don't have to come in
7 and say he hasn't had time.

8 MS. MOORE: Yeah, that's no problem.

9 VIDEOGRAPHER: Okay. We're off. The time
10 on the clock is 12:00 o'clock.

11 (Off the record.)

12 VIDEOGRAPHER: Okay. We're back on the
13 record. The time is 12:08.

14 BY MS. MOORE:

15 Q. All right, Doctor. We're back on the
16 record after a short break.

17 While I'm thinking about it, we didn't
18 attach your book, but I wanted to attach the cover,
19 and we'll discuss with the court reporter on how
20 we're going to do that. But we'll attach the
21 book. You haven't authored any other books
22 other than Manboob Nation, correct?

23 A. Correct.

24 MS. MOORE: All right. We'll label that

1 as Exhibit No. 14.

2 MR. KOTT: Well, we object. We want the
3 entire book copied because the title is quite
4 different than the content.

5 MS. MOORE: Okay. Absolutely.

6 MR. KOTT: I want the entire book copied.

7 MS. MOORE: I have no problem with that.

8 MR. KOTT: Thank you.

9 (Exhibit No. 14 marked.)

10 BY MS. MOORE:

11 Q. All right, Doctor. So let's turn to then
12 your report that you have in front of you, Exhibit
13 No. 3. And I believe you testified earlier that the
14 records that you relied on in rendering your report
15 are those produced in Exhibit No. 5?

16 A. Correct.

17 Q. All right. Let's talk about the
18 first time you -- well, actually, when did you
19 prepare this report? Is that referenced in the
20 invoice?

21 A. The exact final copy? I don't know.

22 Q. Your process and the time you spent
23 preparing this report is referenced in your invoice?

24 A. Yes.

1 Q. And did you type it yourself?

2 A. Yes. Parts of it.

3 Q. Who typed the other parts?

4 A. It came to me in a general outline.

5 Q. Okay. So the outline was prepared --

6 A. I filled the content.

7 Q. By the Herman firm?

8 A. Yes.

9 Q. All right. And so they provided you kind
10 of an outline and the topics, then you filled in the
11 blanks?

12 MR. KOTT: Object to the form.

13 THE WITNESS: Filled in the content.

14 BY MS. MOORE:

15 Q. Pardon?

16 A. Filled in the content. Just a general
17 outline.

18 Q. All right. And so who at the Herman firm
19 prepared the rest of it?

20 MR. KOTT: Object to the form.

21 THE WITNESS: What do you mean "prepared
22 the rest of it"?

23 BY MS. MOORE:

24 Q. You said you prepared part of it. Who

1 prepared the rest of it?

2 MR. KOTT: Object to the form.

3 THE WITNESS: They sent me the general
4 outline and I filled in the content, and that
5 was it.

6 BY MS. MOORE:

7 Q. Okay. Who prepared the outline?

8 A. I don't know.

9 Q. Did you make any alterations to the
10 outline?

11 A. I don't recall.

12 Q. So it looks like from your invoice --
13 and, by the way, we'll just note for the record
14 that we attached the first page of the invoice
15 beginning November 6th, 2015 to the Exhibit
16 No. 4; is that fair to say, Doctor?

17 A. Correct.

18 Q. So it looks like you were retained in
19 2015, there was a Skype meeting, and there were
20 numerous chart work.

21 What chart work were you doing?

22 THE WITNESS: I don't see the November --

23 MR. KOTT: Oh, he doesn't have a copy.

24 THE WITNESS: Okay. Thank you.

1 MR. KOTT: You're welcome.

2 THE WITNESS: Sorry. Ask me the question
3 again?

4 BY MS. MOORE:

5 Q. What chart work? It says "chart work."
6 What does that mean?

7 A. Reviewing their medical records.

8 Q. All right. And to date, you've made close
9 to 50,000 from your work on these cases?

10 MR. KOTT: Asked and answered.

11 THE WITNESS: That's the number, yes.

12 BY MS. MOORE:

13 Q. All right, sir. Is it correct that you
14 filed bankruptcy in 2013?

15 A. That's correct.

16 Q. And what kind of bankruptcy?

17 A. Chapter 11.

18 Q. All right. And what prompted your
19 bankruptcy?

20 A. Business failure.

21 Q. Okay. And when you say "business
22 failure," what does that mean?

23 A. Means money not coming in to match my
24 overhead.

1 Q. And what failed in your business in 2011?

2 A. Obamacare.

3 Q. Okay.

4 A. The changing for the reimbursement
5 structure.

6 Q. All right. And tell us what you mean by
7 that, that you were no longer getting reimbursed?

8 A. The amount of money reimbursement
9 decreased and so that basically we have an overhead,
10 you can't match it. You have a six-month operating
11 capital, you run through it, it goes. You manage,
12 you seek help. You can't get help, you have no
13 recourse.

14 Q. And was this the same time that you
15 stopped doing pelvic organ prolapse surgeries?

16 A. No. That was before.

17 Q. Okay. So you stopped doing pelvic organ
18 prolapse surgeries in what year?

19 A. 2010.

20 Q. And then when did you start this new
21 business?

22 A. New business here?

23 Q. Yes, sir.

24 A. I started seeing patients here in 2013.

1 Q. What did you do during 2000 --

2 A. I'm sorry. Let me correct that.

3 I saw patients here on a limited basis
4 prior to 2013. This became my primary practice in
5 2013.

6 Q. Do you have a partner?

7 A. Yes, I do.

8 Q. Who's your partner?

9 A. Nan Sprouse.

10 Q. And who is Nan Sprouse?

11 A. A nurse practitioner.

12 Q. How many employees do you have working
13 with you now?

14 A. Five.

15 Q. All right. So we're looking at the
16 information that you had at the time you first had
17 an opportunity to treat Ms. Shively.

18 A. Are you referencing the medical records?

19 Q. Yes.

20 A. Okay.

21 Q. So why don't you take us through that very
22 that very first visit.

23 MR. KOTT: When you say take you through,
24 do you want him to read this in the record?

1 You want him to read his report into the
2 record?

3 MS. MOORE: He can tell me the basic
4 facts.

5 MR. KOTT: Okay. You don't want him to
6 put this -- to read this?

7 MS. MOORE: I'll help you out here.

8 THE WITNESS: Okay.

9 MR. KOTT: Hold on a second. I don't want
10 you to help him out. I want you to pose a
11 question that he can answer.

12 MS. MOORE: Okay. I'm going to object to
13 you interfering.

14 MR. KOTT: Yeah. Well, I'm going to
15 object to you trying to say that you're going
16 to help out --

17 MS. MOORE: Off the record for a second
18 because I think you're eating my time.

19 MR. KOTT: Go ahead.

20 VIDEOGRAPHER: Okay. We're off. The time
21 is 12:15.

22 (Off the record.)

23 VIDEOGRAPHER: Okay. We're back on the
24 record. The time is 12:15.

1

2 BY MS. MOORE:

3 Q. All right. Doctor, your Counsel was
4 offended because I said I wanted to help you out. I
5 simply wanted to direct you to a certain area of
6 your report. So if you will focus your attention on
7 the history that the client gave you when she first
8 presented and tell us about the key facts, that
9 would be helpful. Thank you.

10 MR. KOTT: Object to the form of the
11 question.

12 Please answer.

13 THE WITNESS: When she first presented to
14 me, she came in with complaints of menopausal
15 symptoms and stress urinary incontinence.

16 BY MS. MOORE:

17 Q. Anything else?

18 MS. MOORE: Let's go off the record.

19 VIDEOGRAPHER: Going off the record. The
20 time is 12:16.

21 (Off the record.)

22 VIDEOGRAPHER: Okay. We're back on the
23 record. The time is 12:22.

24 (Exhibit No. 15 marked.)

1 BY MS. MOORE:

2 Q. All right, Doctor. I've handed you what
3 we've marked as Exhibit No. 15. And it is your
4 office outpatient visit from March 7th, 2008; is
5 that correct?

6 A. That's correct.

7 Q. All right. And let's just go down first
8 to the history of the present illness. And if
9 you'll look down, it's where she reports to you that
10 some of the problems that she's had and why she's
11 coming to see you; is that fair?

12 A. That's fair.

13 Q. She reports urinary frequency. She
14 reports daytime frequency to be ten to 12 and
15 nocturia, three to four. This has been ongoing for
16 about five years.

17 A. Is that a question?

18 Q. Yes, sir.

19 A. Yes.

20 Q. All right. So she has had ongoing -- and
21 it's further noted in your next paragraph, "With
22 regards to female stress incontinence, this has been
23 a problem for five years."

24 A. Yes.

1 Q. So this particular problem preceded any
2 involvement with the mesh, correct?

3 A. Her symptoms?

4 Q. Yes.

5 A. Yes.

6 Q. All right. And now let's go on. She's
7 also complaining of constipation?

8 A. Second paragraph now? Yes.

9 Q. Difficulty voiding, reduced stream. And
10 again the dribbling and the urgency?

11 A. Correct.

12 Q. She's got a medical history that's
13 pertinent for genital prolapse, multiple child
14 births, and pelvic surgery?

15 A. That's correct.

16 Q. And if you look down, what is her weight
17 at this time? It looks like she's gained 50 pounds
18 gradual?

19 A. Oh, okay. You're talking about
20 constitutional?

21 Q. Yes, sir.

22 A. Yes, gradual 50 pounds.

23 Q. Do you have an exact weight in here?

24 A. That's what I was looking for.

1 Q. Okay. We'll come to that. We'll come to
2 that.

3 Just keep going. I want to focus in on
4 her gynecological history. It looks like she's
5 had -- how many times has she been pregnant and how
6 many miscarriages?

7 A. She's been pregnant three times and had
8 one miscarriage.

9 Q. All right. And she has a history of
10 abnormal Pap, and then you go to her surgical
11 history. Take us through her surgical history,
12 please.

13 A. 1991 -- 1981, she had an appendectomy.
14 2001, she had a cholecystectomy. In 1995, she had a
15 hysterectomy. And she had -- with no dates
16 included, D&Cs, or dilation and curettages, four
17 to five times. Endometrial ablation. Exploratory
18 laparotomy with BSO -- I'm sorry, exploratory
19 laparotomy, and then a BSO with exploratory
20 laparotomy '98.

21 Q. Okay. And the D&C, what necessities
22 one to require a dilation and curettage four to five
23 times?

24 A. Curettage?

1 Q. Yes, sir.

2 A. There could be a variety of reasons.

3 Q. Such as?

4 A. Heavy bleeding.

5 Q. Okay. And let's see. Hysterectomy.

6 And did -- she also had again the
7 hysterectomy, heavy bleeding, endometrial ablation.

8 So she had a significant number of
9 abdominal pelvic surgeries at the time she presented
10 to you; is that fair to say?

11 A. Based on your assessment, it's fair.

12 Q. It's not my assessment, sir. It's based
13 on the records she provided to you, right?

14 A. Well, put it in context, somebody could
15 come in with 20.

16 Q. I'm sorry?

17 A. Put it in context, somebody could come in
18 with 20.

19 Q. Well, yeah, but I'm just saying what she
20 had presented to you.

21 A. Yeah, she's had numerous.

22 Q. Okay. And when you have surgeries like
23 this, based on your experience, it's common to see
24 adhesions from surgery?

1 A. It can be.

2 Q. You can see adhesions? And what kind of
3 problems can you have with adhesions?

4 First of all, what is an adhesion?

5 A. An adhesion is a part of the healing
6 process in a hyper-inflammatory process. So it
7 basically involves fibrosis of normal and
8 surrounding tissue.

9 Q. Just scarring?

10 A. Yes, scarring. Creating an abnormal
11 anatomical connection attachment.

12 Q. So these surgeries that Ms. Shively had
13 at least present the opportunity for adhesions and
14 fibrosis and scarring in the abdominal pelvic area,
15 correct?

16 A. Some of them, yes.

17 Q. Which ones don't?

18 A. The endometrial ablation is not going to
19 provide scarring within the pelvis. That's
20 contained within the uterine cavity.

21 Q. So there may be, okay, scarring.

22 Okay. And let's see. Let's keep going
23 down.

24 A. The D&C follows the same.

1 Q. And mental health history, bulimia
2 nervosa. What is that?

3 A. Bulimia nervosa is a disorder whereby they
4 induce themselves to vomit. It's a perception
5 disorder.

6 Q. Okay. Did you discuss that with her?

7 A. It was a historical past. It was no
8 longer a problem for her.

9 Q. And where's that -- oh, not practicing.
10 Got it.

11 All right. Then you do the exam. And it
12 looks like all within normal limits; is that
13 correct?

14 A. No.

15 Q. All right. I note -- let's take me
16 through that.

17 A. Okay. The general respiratory,
18 cardiovascular.

19 Q. I think I'm talking about the genital --
20 genitourinary first. Let's go there.

21 A. Okay.

22 Q. That's within normal?

23 A. Okay. Actually, part of it is
24 inappropriately cut down below the psychiatric. But

1 looking at the genitourinary examination, so it's
2 missing part down there that states the pelvic organ
3 prolapse, you see that? That should be -- it's at
4 the end, just below the psychiatric, that should be
5 actually included underneath the genitourinary.

6 Q. Okay. All right. But aside from that,
7 when you look at genitourinary, external
8 genitalia is normal, you go through all that. What
9 is normal hair pattern?

10 A. Just means that she has a normal -- what
11 appears to be a normal hair pattern of the vulva.

12 Q. Okay. Without lesions or urethral
13 abnormalities, vagina atrophic. So there was
14 vaginal atrophy noted?

15 A. Mild.

16 Q. And then your assessment was female stress
17 incontinence. Prolapse of the vaginal vault after
18 hysterectomy. Urinary frequency. And symptomatic
19 menopausal or female climacteric state?

20 A. Climacteric state.

21 Q. Climacteric.

22 A. Menopausal symptoms.

23 Q. Okay.

24 A. That's based on the coding.

1 Q. Where did the prolapse diagnosis come
2 from?

3 A. My -- my examination.

4 Q. And that would be?

5 A. A reference to pelvic -- pelvic organ
6 prolapse.

7 Q. Down under psychiatric?

8 A. Yes.

9 Q. Now, she again had the multiple -- we
10 talked about the multiple abdominal surgeries. That
11 did increase her risk of adhesions, correct?

12 A. Correct.

13 Q. Adhesions can cause pain?

14 A. They can. I don't think she had any
15 reference to pain, though.

16 Q. But adhesions can cause pain?

17 A. Right.

18 Q. Okay. And the more surgeries a person
19 has, the more likely they are to develop adhesions?

20 A. Correct.

21 Q. All right. Based on your coding, was your
22 assessment any different?

23 A. Yeah. Better clarification was enterocele
24 and rectocele, stage two.

1 Q. All right. What does that mean? Say that
2 again? I'm sorry.

3 A. A stage two enterocele and a stage two
4 rectocele.

5 Q. All right. So then it looks like she has
6 a urodynamic report that's positive for obstructive
7 voiding. That's on March 20th, 2008?

8 A. I have that.

9 Q. You have that?

10 MR. KOTT: March 20th?

11 BY MS. MOORE:

12 Q. Yeah. But we're not going to -- I'm just
13 kind of commenting on that.

14 But let's go to the next time you have an
15 opportunity to see her, which I believe is actually
16 that same day, March 20th, 2008, but it's a clinic
17 visit.

18 A. Hold just a second.

19 MS. MOORE: Off the record for a second.

20 VIDEOGRAPHER: And we're going off. The
21 time is 12:32.

22 (Off the record.)

23 VIDEOGRAPHER: We're back on the record.

24 The time is 12:35.

1 BY MS. MOORE:

2 Q. Got it. All right.

3 We looked at your office visit of
4 March 20th, 2008, and again your assessment of
5 that date were the same as earlier: Female
6 stress incontinence. Prolapse of the vaginal
7 vault after hysterectomy. Urinary frequency.
8 Symptomatic menopausal or female climacteric state?

9 A. Climacteric.

10 Q. I'm going to get it. I've got a couple
11 more times to say it.

12 A. Menopausal symptoms.

13 Q. So, Doctor, let's go to April 3rd, 2008.

14 A. Okay.

15 Q. And again she -- what I'm focusing in on
16 in that particular office visit is she's diagnosed
17 with constipation; and, again, she's unable to
18 clarify how long it's present. So she's
19 experiencing constipation, and not only the first
20 visit, but she's complaining of it again when she
21 sees you in April of 2008; is that fair to say?

22 A. Fair to say.

23 Q. And then you have a plan for her to deal
24 with her stress incontinence and her vaginal

1 enterocele. And your plan, it sounds like you
2 tell me about your informed consent process.
3 Do you have a pretty detailed process by which you
4 talk to your patients and make sure that they are
5 aware of the potential risks associated with
6 surgery?

7 A. Yeah. I would describe the procedure
8 itself, describe what we knew, evidence in terms of
9 literature-wise at the time. And then basically
10 talk about the risks and benefits of the procedure.

11 Q. Okay. And let's talk about what you had,
12 what you discussed with her on this visit.

13 A. Where is it at?

14 Q. On April 8th -- I'm sorry, April 3rd,
15 2008. Do you see that?

16 MS. MOORE: I've got a copy here, guys.

17 MR. KOTT: Yeah, pass that out.

18 MS. MOORE: Let's go off the record.

19 VIDEOGRAPHER: We're going off the record.

20 The time is 12:37.

21 (Off the record.)

22 VIDEOGRAPHER: Okay. We're back on the
23 record. The time is 12:39.

24 (Exhibit No. 16 marked.)

1 BY MS. MOORE:

2 Q. All right. And I believe we've labeled
3 the April 3rd, 2008 visit as Exhibit No. 16.

4 And, Doctor, I was focusing in on your
5 pre-op plan where you discuss the risks with your
6 patient. This is the risks that you would have
7 discussed in 2008, correct?

8 A. Correct.

9 Q. And do you discuss at that time -- you
10 discussed with Ms. Shively --

11 A. Yes.

12 Q. -- a three to five percent erosion risk?

13 A. Yes.

14 Q. Now, you testified earlier that you were
15 aware during this time period that based on your
16 experience, you were seeing erosion of 15 to
17 20 percent. Why would you tell your patient that
18 there was a three to five percent erosion rate?

19 A. Because at that time I had every reason to
20 believe that the procedure itself was safe and
21 effective, and the fact that my numbers were
22 different didn't quite add up.

23 Q. So what you told --

24 A. Because the company told me it was

1 five percent or less.

2 Q. So instead of telling Ms. Shively, or any
3 of the other patients what your own experience was
4 and your knowledge of an erosion risk, you told them
5 a much lower risk?

6 MR. KOTT: Object to the form of the
7 question.

8 THE WITNESS: I was quoting the risk that
9 the -- that Ethicon had listed and that we were
10 told to quote.

11 BY MS. MOORE:

12 Q. So you did whatever Ethicon told you to
13 do?

14 MR. KOTT: Object to the form.

15 THE WITNESS: No.

16 BY MS. MOORE:

17 Q. Okay. And you testified pretty clearly
18 earlier that your erosion rate was 15 to 20 percent,
19 and you said around the 2006 time period. Here it
20 is in 2008 and you're telling patients that the risk
21 is three to five percent.

22 A. I didn't say 2006. I said 2007.

23 Q. Okay. Six months before?

24 A. I said six months prior is when I started

1 to notice.

2 Q. Okay. So 2007. The record will speak for
3 itself.

4 A. Right.

5 Q. So 2007 you're at a conference, you are
6 debating with colleagues and with Ethicon what the
7 true erosion rate is. Your experience was 15 to
8 20 percent.

9 MR. KOTT: Object to the form.

10 BY MS. MOORE:

11 Q. And now you're telling patients a year
12 later that it's three to five percent. Is that
13 accurate information?

14 MR. KOTT: Object to the form.

15 THE WITNESS: Actually, it's not a year
16 later, it's less than six months later.

17 BY MS. MOORE:

18 Q. Okay. All right.

19 A. But --

20 Q. Is that accurate information?

21 MR. KOTT: Whoa. Stop, please, and let
22 him answer the question.

23 THE WITNESS: I had every reason to
24 believe that the procedure and the information

1 given to me by the company at that point was
2 valid.

3 BY MS. MOORE:

4 Q. Okay. So you're disregarding your own
5 experience of 15 to 20 percent of an erosion rate
6 and downplaying that and telling the patient it's
7 only three to five percent?

8 MR. KOTT: Object to the form.

9 THE WITNESS: I didn't downplay it. I
10 basically quoted the literature that they had
11 and I was processing because I believed this
12 procedure to be safe and effective.

13 BY MS. MOORE:

14 Q. Where is the literature that you're
15 pointing to?

16 A. I told you earlier, the literature
17 provided by Ethicon, the TVM study.

18 Q. Is that on your reliance list?

19 MS. MOORE: Let's go off the record for a
20 second.

21 MR. KOTT: No, no, you're not going to go
22 off the record.

23 MS. MOORE: We're going off the record.

24 We're going off the record. Yes, off the

1 record.

2 VIDEOGRAPHER: We're off. The time is
3 12:43.

4 (Off the record.)

5 VIDEOGRAPHER: Okay. We're back on the
6 record. The time is 12:54.

7 BY MS. MOORE:

8 Q. All right. Doctor, we've taken a short
9 break and I've asked the question with respect
10 to what would be the support for your belief
11 that the three to five percent erosion risk in your
12 consent form was something that was given to you by
13 Ethicon.

14 A. Well, it would be the IFU, and then I
15 referenced the study that's referenced as Ethicon
16 Clinical Assessment of Feasibility Complications and
17 Effectiveness of 12 months, three years and five
18 years of the TVM technique for genital prolapse.

19 Q. All right. And that is which number? Is
20 it numbered or it's on a page --

21 A. It's not numbered. It is on -- it's not
22 even numbered.

23 Q. It's on the reliance list?

24 A. Yes.

1 Q. And it's --

2 A. Yes.

3 Q. All right. So then let me hand you the
4 Gynecare Prolift Surgeon's Resource Monograph that
5 was used in April of 2007. It's marked as Ethicon
6 Mesh 03460813 all the way to 853. Feel free to look
7 at the entire document and we'll go off the record,
8 of course, to accommodate you, but I want to focus
9 your attention in on page eight under Mesh
10 Complications, Erosion, Exposure and Extrusion.

11 A. Okay. You're going to have to show me
12 where this is. Was this right here?

13 MR. KOTT: No, no, this is a separate
14 document.

15 Do you have another copy that I could be
16 perusing?

17 MS. MOORE: Yeah, we do.

18 MR. KOTT: Thank you.

19 BY MS. MOORE:

20 Q. I'm focusing in, so you know, on page
21 eight.

22 A. Okay.

23 MR. KOTT: You need to kind of scan that.

24 MS. MOORE: Off the record.

1 (Off the record.)

2 VIDEOGRAPHER: We're going off. The time
3 is 12:56.

4 (Off the record.)

5 VIDEOGRAPHER: Okay. We're back on the
6 record. The time is 1:01 p.m.

7 (Exhibit No. 17 marked.)

8 BY MS. MOORE:

9 Q. All right. Doctor, we just had an
10 opportunity to review what we've marked as Exhibit
11 No. 17. And focusing on 65883 -- strike that.

12 Focusing in on page eight under Mesh
13 Complications, Erosion, Exposure, and Extrusion,
14 this was a document called the Surgeon's Resource
15 Monograph for the Gynecare Prolift, correct?

16 A. Yes, that's what you presented.

17 Q. Okay. And in this particular document
18 that was given to surgeons who attended courses and
19 who performed surgery with the Prolift, this
20 document states in the second sentence -- I'm sorry,
21 the first sentence: "This is to be contrasted with
22 a known occurrence of simple vaginal mesh exposure.
23 It occurs in approximately three to 17 percent of
24 cases."

1 That's what Ethicon was telling you on
2 April 13th, 2007, correct?

3 MR. KOTT: Object to the characterization
4 of this document.

5 Please answer.

6 THE WITNESS: Yes.

7 BY MS. MOORE:

8 Q. So you have this information, you had your
9 own information that you were seeing 15 to
10 20 percent exposure rates, and nonetheless in your
11 consent -- I said exposure, I meant to say
12 erosion -- nonetheless you put three to five percent
13 erosion risk, correct?

14 A. Those were the numbers that the -- Ethicon
15 told me to put.

16 Q. And where do you have any documentation
17 where Ethicon is telling you to put three to five
18 erosion risk?

19 A. I don't have it.

20 Q. Okay. So you have no evidence, correct?

21 MR. KOTT: Object to the form.

22 THE WITNESS: No.

23 BY MS. MOORE:

24 Q. But we do have the surgical resource

1 monograph that you received in 2007, which says that
2 mesh erosion exposure is three to 17 percent,
3 correct?

4 A. Yes, that's what it says.

5 Q. Does Ethicon instruct you what to put in
6 your consent?

7 A. No. But I believed, again, them to be the
8 company to provide safe, effective materials and
9 support to the procedure. So when I would seek
10 guidance on developing the informed consent, these
11 are the information that they gave me to put in.

12 MS. MOORE: Let's go ahead and attach
13 that.

14 BY MS. MOORE:

15 Q. And then we'll go down to the package
16 insert that you referenced. You said that was the
17 other information that you relied on?

18 MR. KOTT: He has to look at it.

19 MS. MOORE: I'm going to.

20 THE WITNESS: Talking about the IFU?

21 BY MS. MOORE:

22 Q. Yes, sir.

23 A. Okay. Yes.

24 (Exhibit No. 18 marked.)

1 BY MS. MOORE:

2 Q. IFU. I call it the package insert.

3 But why don't you take a look at this
4 particular document labeled as Exhibit No. 18,
5 Gynecare Prolift. And it is again in the
6 November 2007 time period.

7 Take a look at the entire document. We'll
8 go off record, but I'd like to focus your attention
9 on the information on the back page under Adverse
10 Reactions.

11 MS. MOORE: Off the record.

12 VIDEOGRAPHER: We're going off. The time
13 on the camera is 1:05 p.m.

14 (Off the record.)

15 (Exhibit No. 19 marked.)

16 VIDEOGRAPHER: Okay. We're back on the
17 record. The time is 1:08 p.m.

18 BY MS. MOORE:

19 Q. Doctor, we are back on the record, and
20 I've provided you with two exhibits, Exhibit No. 18
21 and No. 19. And they are the package inserts or the
22 IFUs for the Gynecare -- the Gynecare Prolift and --

23 A. TVT-S.

24 Q. -- the TVT-S -- thank you, sir -- and

1 those are dated 2007. And under the adverse
2 reaction section, it does reference and warn of the
3 adverse reaction, potential risk of erosion,
4 correct?

5 A. It does.

6 Q. There's no rate provided, correct?

7 A. That's correct.

8 Q. Okay. So can you think of anything else
9 that you were referencing that may provide erosion
10 rates, exposure rates, other than what we've
11 discussed?

12 A. By these two IFUs?

13 Q. Or by any information.

14 A. Sure. The other studies listed and
15 communications with other experts.

16 Q. Okay. I'm trying to find the basis for
17 your three to five percent erosion risk in your
18 consent form.

19 A. That was numbers that came from Ethicon.

20 Q. Okay. But, again, as we sit here today,
21 and you're describing what you relied on or telling
22 the ladies and gentlemen of the jury, you've seen
23 documents from Ethicon during that time period, one
24 said three to 17 percent, two were silent and just

1 say there is that risk?

2 A. The three to five percent falls within the
3 three to 17 percent.

4 Q. Right. But you were complaining
5 earlier that you believe that risk to be
6 underreported to you, and is three to 17 greater
7 than three to five?

8 MR. KOTT: Object to the form.

9 Go ahead, Doctor.

10 THE WITNESS: The range is, yes.

11 BY MS. MOORE:

12 Q. All right. Let's go then back to
13 your -- let's attach this.

14 Let's go to the other risks that are in
15 your visit on April 3rd.

16 A. Okay.

17 Q. And if you want to turn back, I'm just
18 going to quickly try and go through these.

19 A. That's Exhibit No. 16, correct? Just to
20 make sure I have the right one in front of me.

21 Q. Yes, sir. Thank you for pointing that
22 out.

23 We talked about the three to five percent
24 erosion risk despite that your experience was

1 higher. Failure of reconstructive support, damage
2 to bladder and/or bowel, extrusion of graft, death,
3 conversion to laparotomy, de novo urinary,
4 irritative voiding symptoms, VTE risks. Those were
5 some of the risks for the TVT-O and some of the
6 similar risks for the Prolift?

7 A. Yes.

8 Q. And also a note to warn of the potential
9 for an infection?

10 A. Yes.

11 Q. Okay. Let's look at the actual consent
12 form that you provided Ms. Shively. And we'll go
13 back -- go off record for a second so you have
14 adequate time to look at them. I'll provide you
15 with a copy.

16 VIDEOGRAPHER: Going off the record. The
17 time is 1:11.

18 (Off the record.)

19 (Exhibit No. 20 marked.)

20 VIDEOGRAPHER: We're back on the record.
21 The time is 1:12 p.m.

22 BY MS. MOORE:

23 Q. Dr. Goodyear, I've handed you what I've
24 labeled as Exhibit No. 20. And this is the consent

1 that has Ms. Shively, Teri Shively's name on it; is
2 that fair to say?

3 A. That is fair to say.

4 Q. And it looks like it's signed and
5 witnessed in the back, April 3rd, 2008?

6 A. Yes.

7 Q. And it looks -- appears to be a signature
8 of Ms. Shively?

9 A. That is correct.

10 Q. And if you -- now obviously I want you to
11 take your time and look at anything you need. I
12 think you've done that.

13 There's actually two consents, one for
14 polypropylene mesh and the other is for the TVT-O.
15 Actually, there's three, repair and relaxation of
16 the pelvic organs.

17 So you really spent some time making sure
18 that she was adequately informed with all the
19 potential risks, would that be fair to say?

20 A. Yes.

21 Q. So let's look at some of the other things
22 that you discussed with her. And it looks like you
23 discussed the potential for, as we said,
24 infection -- I'm looking at the second page --

1 infection, erosion, extrusion, vaginal discharge
2 and/or scarring, dyspareunia.

3 What is dyspareunia?

4 A. Pain with intercourse.

5 Q. Okay. Severe blood loss, failure of
6 surgical repair, re-exploration and removal, fistula
7 formation, allergic reaction, rejection or death,
8 possible injury to bowel, bladder, urethra, or other
9 pelvic/abdominal structure, fistula formation caused
10 by injury to the bowel, bladder, or urethra.

11 Additional surgery can include, and you list some
12 of the potential surgeries that may be required.

13 Would that be fair to say?

14 A. Yes.

15 Q. And you also go on to state that she could
16 have -- or a patient could have lack of improvement,
17 temporary improvement, and/or failure of urine
18 control, prolapse symptoms, possible discomfort in
19 sexual intercourse, and possible formation of blood
20 clots or emboli?

21 A. Correct.

22 Q. All right. And these were risks that were
23 known to you before you did surgery on Ms. Shively;
24 is that fair to say?

1 A. That's fair to say.

2 Q. And these would be risks that you would
3 have learned during your residency and training in
4 med school and thereafter, leading up to the time
5 you would have performed surgery on Ms. Shively or
6 any of the other patients that we're going to be
7 speaking about; is that fair to say?

8 A. That's fair to say.

9 MS. MOORE: All right. Attach that.

10 BY MS. MOORE:

11 Q. Let's go now to the next time I believe --
12 it looks like you saw her on April 18th. There's no
13 need to really go into that, except I have a
14 question. What is endoanal ultrasound, why did you
15 do one on Ms. Shively, April 18th, 2008?

16 A. I did one because of the stage two, stage
17 three enterocele and the prior vaginal surgeries.
18 Concerning myself, it's common for them to have
19 external anal sphincter or internal anal sphincter
20 defects as a part of just the tears in the process
21 of vaginal delivery or being an episiotomy.

22 Q. All right. Looks like you see her again
23 in May of 2008. And then -- with the same
24 assessment on that date. And then she returns on

1 May 13th, 2008, and you are consenting her again for
2 implant surgery.

3 So why was it important for you to discuss
4 the consents again with Ms. Shively?

5 A. Where are you referencing?

6 Q. 5/13/2008.

7 MS. MOORE: Let's go off the record.

8 VIDEOGRAPHER: We're going off. The time
9 is 1:16.

10 (Off the record.)

11 (Exhibit No. 21 marked.)

12 VIDEOGRAPHER: Okay. We're back on the
13 record. The time is 1:17 p.m.

14 BY MS. MOORE:

15 Q. Doctor, you again consented the patient
16 before this surgery; is that correct?

17 A. Yes.

18 Q. And the patient verbalized understanding
19 and the desire to proceed?

20 A. Correct.

21 Q. Do you recall any questions that she
22 had --

23 A. I don't.

24 Q. -- as you sit here today?

1 A. I don't recall.

2 Q. Now, let's go through the surgery. I
3 don't need to go through the surgery except for a
4 couple of things. Obviously you felt like the
5 surgery at the time went well?

6 A. Yes, I documented that there.

7 Q. Okay. Why was loose tension allowed
8 using the surgeon's index finger when the cannula
9 was removed?

10 A. That's per the instructions that Ethicon
11 gave us.

12 Q. And what's the purpose of that?

13 A. Of?

14 Q. Of allowing the loose tension.

15 A. To prevent overtightening, overcorrection.

16 Q. And what happens if you have
17 overcorrection or overtightening?

18 A. The potential for increased postoperative
19 complications.

20 Q. Such as?

21 A. Urgency, urinary tension, etcetera.

22 Q. What would cause the urgency, urinary
23 retention, etcetera?

24 A. Overtightening of the placement of the

1 mesh.

2 Q. And what happens when you over -- I'm
3 trying to understand the mechanism. When you
4 overtighten it, over time what would happen?

5 A. Yeah. You would -- overtightening, you're
6 basically creating a non-anatomical support.

7 Q. And that can that cause contracture?

8 A. The pure placement of the mesh could cause
9 contracture, but the overtightening would not be one
10 of the primary causes of the contracture.

11 Q. But it could be?

12 A. It could.

13 Q. All right. What was the condition of the
14 mesh when you put it in?

15 A. As it came out of the kit box.

16 Q. So no evidence of fraying or roping
17 or folding or any problems that you noted?

18 A. Not that I can remember when documented
19 here.

20 Q. And you did place the mesh with loose
21 tension?

22 A. Correct.

23 Q. And the sling was placed loosely
24 underneath the mid-urethra?

1 A. Correct.

2 Q. And why did you place that loosely?

3 A. Because, again, that's per the guidance of
4 the training for Ethicon and the placement of the
5 TVT.

6 Q. But as the surgeon who did these, what
7 would be the rationale?

8 A. Well, you don't want to overcorrect. You
9 want to provide simply a means for the body to
10 correct.

11 Q. Thank you.

12 It looks like, as you said, that she went
13 through a successful procedure.

14 Let's go then to -- she's discharged. And
15 let's go to 5/28/08.

16 A. Last one I got here is 5/22.

17 MS. MOORE: All right. Let's go off the
18 record.

19 VIDEOGRAPHER: Going off the record. The
20 time is 1:20 p.m.

21 (Off the record.)

22 VIDEOGRAPHER: Back on the record. The
23 time is 1:21.

24 (Exhibit No. 22 marked.)

1 BY MS. MOORE:

2 Q. If you're looking at 5/28/08, which we've
3 marked as Exhibit No. 21 (sic), it appears it's two
4 weeks post-op for Ms. Shively, post-op after
5 surgery. She's returning to you. She's over the
6 irritation, itching of the yeast infection, but
7 she's got a really bad discharge?

8 A. Correct.

9 Q. And her bladder is doing good?

10 A. Yes, correct.

11 Q. No evidence of stress urinary
12 incontinence?

13 A. Correct.

14 Q. And what do you believe is causing that
15 bad discharge?

16 A. Vaginal discharge is pretty common during
17 the immediate postoperative period. So at that
18 point that was my assumption.

19 Q. Okay. All right. Let's go then to the --
20 again, in the 6/4/2008, you note normal post-op
21 vaginal discharge. That would be again what you
22 were describing, correct?

23 A. Correct.

24 Q. And she has good pelvic support at that

1 time?

2 A. Correct.

3 Q. All right. Let's go then to 6/18/08. And
4 the patient is complaining of a pinhole opening just
5 the right of midline resection?

6 A. Yes.

7 Q. Do you see any complaints of back pain
8 there?

9 A. In her HPI?

10 Q. Yes.

11 A. Yes.

12 Q. Okay. Back pain and, what, hip discomfort
13 from positioning?

14 A. Correct.

15 Q. Okay. Let's go down to the clinic visit,
16 and it looks like the next one, 7/3/08, she's doing
17 much better.

18 We don't have to focus on that. We can
19 keep going.

20 Go to 7/22/08.

21 A. Okay.

22 Q. And it looks like her bladder function is
23 great, no problems. Bowel habits improved,
24 complained of pinkish sometimes bright red spotting,

1 right?

2 A. Correct, yes.

3 Q. First time we're seeing spotting?

4 A. That's correct.

5 Q. All right. Let's keep going. The next
6 visit --

7 A. That's where mine stops.

8 MS. MOORE: Off the record.

9 THE WITNESS: Off the record.

10 VIDEOGRAPHER: 1:25.

11 (Off the record.)

12 VIDEOGRAPHER: Okay. We're back on the
13 record. The time is 1:25.

14 BY MS. MOORE:

15 Q. All right, Doctor. That's the last time
16 you had an opportunity to see Ms. Shively was on
17 July 22nd, 2008?

18 A. Correct.

19 Q. And you've never had an opportunity to
20 remove any mesh or excise any mesh from Ms.
21 Shively, correct?

22 A. Correct.

23 Q. You're not really in a position to comment
24 on any of that, correct?

1 MR. KOTT: Object to the form.

2 THE WITNESS: I can comment on my opinion,
3 but did I actually remove, no.

4 BY MS. MOORE:

5 Q. And I do want your comments on your
6 opinion, but at this -- obviously we want to know,
7 the basis for all your opinions too.

8 So with respect to Ms. Shively,
9 throughout your care and treatment of her, there was
10 no evidence of mesh exposure, extrusion, correct?

11 A. There was, the pinhole.

12 Q. Oh, the pinhole. Okay.

13 Now, let's go back -- now you're treating
14 the post-op visit, the pinhole opening right of the
15 suture line in the vaginal mucosa found posteriorly?

16 A. That's what I --

17 Q. That's what you mean?

18 A. Yeah, that's what I'm referencing.

19 Q. Okay. You do not reference mesh
20 there, correct?

21 MS. MOORE: Let's go off the record.

22 THE WITNESS: I don't reference it, but it
23 would have been there.

24 BY MS. MOORE:

1 Q. Okay. So you're saying that now, but at
2 the time you --

3 MR. KOTT: Are we back on the record?

4 MS. MOORE: Yeah.

5 THE WITNESS: Correct, I didn't reference
6 it there.

7 BY MS. MOORE:

8 Q. Okay.

9 MS. CAPODICE: I don't think you're on the
10 record.

11 MS. MOORE: On the record.

12 BY MS. MOORE:

13 Q. All right. So now eight years later
14 you're saying that the pinhole opening to the right
15 of the midline resection was as a result of mesh,
16 yet your record is silent and does not mention mesh,
17 correct?

18 A. I didn't say as a result of the mesh. I
19 said the mesh would have been there.

20 Q. Okay. My question to you was, was there
21 any evidence of mesh extrusion or exposure?

22 A. Well, yes, because --

23 Q. In your records?

24 A. In my records, there are not.

1 Q. Okay. Well, it's been a long time
2 since you saw this particular patient, and the
3 best evidence is your records, correct?

4 A. If you have a mesh, it encompasses the
5 entire posterior vaginal -- rectovaginal septum.
6 When you have a pinhole, there will be the presence
7 of mesh underneath the pinhole.

8 Q. Okay. You're not saying that the mesh was
9 coming through the pinhole, correct?

10 A. I did not say that, correct.

11 Q. Okay. So you never removed any mesh
12 from Ms. Shively, correct?

13 A. That is correct.

14 Q. All right. Now, were you aware that Ms.
15 Shively testified in her deposition that she did not
16 return to see you because -- let's see, Shively
17 deposition, it was 12/14/2015. When asked "Why is
18 it that you do not want to go back to see Dr.
19 Goodyear?"

20 Answer, "I reported some issues, phone
21 calls were not returned, I felt like I felt
22 abandoned."

23 Were you aware that Ms. Shively felt
24 abandoned and did not want to return to see you?

1 A. We had no medical record of that.

2 Q. Okay. So you don't have recollection of
3 that being an issue with the patient?

4 A. We record phone calls, just as we do
5 office visits.

6 Q. Okay. So you did know that Ms. Shively
7 felt abandoned by you?

8 A. That's her opinion, but I don't have any
9 record of that.

10 Q. Are you aware that Dr. William Porter has
11 also been hired by the plaintiffs to do an exam on
12 Ms. Shively?

13 A. Yes.

14 Q. Why didn't you do an exam on Ms. Shively?

15 A. She didn't come back.

16 Q. Okay. You mention that he's proposed
17 another mesh revision in your report, page five?

18 A. Yes, last sentence.

19 Q. Isn't it correct that he didn't
20 specifically suggest a revision but discussed all
21 options with Ms. Shively, including the Femsoft
22 inserts versus pessary, vaginal weights, bladder
23 diet, Kegel's?

24 A. I don't know. You're inferring what I

1 heard him say at that time, and I can't do that.

2 Q. Oh, you heard him?

3 A. No, I'm saying I cannot infer. You're
4 asking me to infer what he said to her.

5 Q. Have you looked at his report?

6 A. What I have here quoted is what he said,
7 and that's what I put in. But in terms of you
8 asking me if I was there to listen and infer all
9 those other alternative therapies, I was not.

10 Q. Okay. So he may have said other things.
11 Let me ask you this. Did you look at
12 his report?

13 A. Yes.

14 Q. And so if this other information was in
15 his report, why did you not select to put the
16 complete information in your report and only pull
17 out one sentence related to the mesh?

18 A. To be honest, I can't give you -- I don't
19 know.

20 Q. You don't know?

21 So if I was to show you his report and he
22 referenced these other potential options, you would
23 have had an opportunity to look at all those
24 options, correct?

1 A. Yeah, you're going to present every option
2 possible, despite some of the options really not
3 being good options.

4 Q. But being forthcoming, you did not report
5 all of what Dr. Porter said in his report; you
6 only selected one sentence, correct?

7 MR. KOTT: Object to the form of that
8 question.

9 THE WITNESS: Again, I'm not -- not aware
10 of everything that he said at that time. All I
11 can go on is what was written.

12 MS. MOORE: Okay. Let's go off the record
13 for a second.

14 VIDEOGRAPHER: Okay. We're going off.
15 The time is 1:31.

16 (Off the record.)

17 MS. MOORE: Back on the record.

18 VIDEOGRAPHER: 13:31.

19 BY MS. MOORE:

20 Q. All right. Is it on the reliance list?
21 I'm starting to yell things out at people.

22 MR. KOTT: I don't know.

23 MS. KOTT: I'm better off keeping my mouth
24 shut.

1 THE WITNESS: I don't know.

2 BY MS. MOORE:

3 Q. All right. Doctor, you don't know if it
4 is or not.

5 Where did you get the information to
6 include in your report?

7 A. As it relates to Dr. Porter?

8 Q. Yes, sir.

9 A. From the firm.

10 Q. Okay. So the law firm gave you that
11 information?

12 A. Correct.

13 Q. All right. And take a look at that report
14 and look under Plan. And it -- page four of five.

15 A. Okay. Yes.

16 Q. And under Plan it says risks -- and
17 correct me if I misstate --
18 "Risk/benefits/alternatives discussed with patient
19 options surgery versus observation versus Femsoft
20 Inserts versus pessary, vaginal weights, bladder
21 diet, Kegel's."

22 So those were also potential options
23 discussed with the patient, correct?

24 A. That he listed there.

1 Q. But you didn't include those in your
2 report?

3 A. In my report of what he had listed here, I
4 did not.

5 Q. And why not?

6 A. Again, I told you before, I didn't have --
7 I don't know why.

8 Q. You didn't have the report?

9 A. No, I don't know why I didn't include
10 them.

11 Q. You don't know why?

12 MR. KOTT: Asked and answered.

13 BY MS. MOORE:

14 Q. Okay. The information that you had with
15 respect to Dr. Porter came from The Herman Law Firm,
16 correct?

17 A. Correct.

18 Q. Okay. Have you actually looked at that
19 report?

20 A. Yes.

21 Q. But they picked out for you what to put in
22 your report?

23 MR. KOTT: Object.

24 THE WITNESS: They didn't pick out

1 anything.

2 MR. KOTT: Object.

3 THE WITNESS: I read through it and took
4 out the information as a summary.

5 BY MS. MOORE:

6 Q. Okay. But you didn't include -- I'm
7 trying to understand why you didn't include the
8 other references to the other options.

9 A. Well, likewise, I didn't include urine
10 culture and other things.

11 Q. All right. Now, with respect to Ms.
12 Shively, one of the specific complaints you said
13 she experienced was the bleeding. You want to
14 find that in your report?

15 MS. MOORE: Let's go off the record so you
16 can look for it.

17 VIDEOGRAPHER: Going off. The time at
18 1:34.

19 (Off the record.)

20 VIDEOGRAPHER: Okay. We're back on the
21 record. The time is 1:35.

22 BY MS. MOORE:

23 Q. So, Doctor, since the paragraph on page
24 five talks about "Since placement of mesh products,

1 the patient's developed abdominal pain, pelvic pain,
2 vaginal pain, intermittent vaginal bleeding, urinary
3 retention, recurrent stress urinary incontinence,
4 recurrent prolapse, recurrent UTI," and then you
5 talk about the periurethral banding and ridging.
6 And you're attributing all of those to the mesh,
7 included limited sexual activity and urinary
8 retention?

9 A. That is my opinion and that is her
10 statement, some of those.

11 Q. Okay. Now, talking about her statements,
12 again, did you read her deposition?

13 A. No, not when I created this.

14 Q. And why not?

15 A. Because of my expert opinion.

16 Q. Okay. Now, would it be important to take
17 into account what the patient says about her
18 underlying conditions?

19 A. Sure.

20 Q. Okay. Because you say you're attributing
21 her bleeding and intermittent vaginal bleeding.
22 Would you be surprised if when asked in her
23 deposition, "Is bleeding something you're currently
24 experiencing?"

1 Answer: "Currently, no."

2 "When is the last time you had trouble
3 with bleeding?"

4 "As I recall, 2012."

5 A. Again, I wasn't there so I don't have
6 privy to that. So I don't --

7 Q. You weren't where?

8 A. I wasn't there when she made that
9 testimony.

10 Q. Okay. So is that something you would like
11 to have before preparing a report? Wouldn't you
12 want to have all the facts and know what the
13 Plaintiff says about her conditions?

14 A. Sure.

15 Q. Okay. So do you want to modify your
16 report and maybe take out that "intermittent vaginal
17 bleeding"?

18 MR. KOTT: Objection.

19 THE WITNESS: At the time I wrote this is
20 what I had to work -- what I had in front of
21 me.

22 BY MS. MOORE:

23 Q. Okay. But now you're presented with other
24 information and you're going to stand by something

1 that's incorrect?

2 MR. KOTT: Object to form.

3 THE WITNESS: Information I haven't seen.

4 BY MS. MOORE:

5 Q. Okay. We'll come back to that.

6 VIDEOGRAPHER: You have three minutes.

7 MS. MOORE: All right, sir.

8 BY MS. MOORE:

9 Q. We'll come back to that.

10 And the other allegations that you
11 attribute to the patient, or to the mesh, abdominal
12 pain. You talked earlier that she had many
13 surgeries. Those are additional factors that may
14 cause that abdominal pain and pelvic pain, correct?

15 A. Correct. But she had episodes
16 postoperatively with no pain.

17 Q. Pardon?

18 A. She had an episode time frame where she
19 was, quote/unquote, good support, doing well as you
20 described, as I wrote there. She said she was in no
21 pain.

22 Q. All right. And that's based on what?

23 A. My medical records.

24 Q. And where is that?

1 Where in your report does she report to
2 you abdominal or pelvic pain? Name one place. Name
3 one place.

4 A. In my report?

5 Q. Or in your care and treatment.

6 A. When I examined her and she felt pain
7 postoperatively at two weeks -- at two weeks.

8 Q. That's two weeks postoperatively?

9 A. Yeah.

10 MS. MOORE: Let's go off the record for a
11 second.

12 Oh, I'm sorry. Go back on the record.

13 BY MS. MOORE:

14 Q. I want you to take your time, look at
15 your records for any evidence that would
16 substantiate abdominal pain, pelvic pain, or any of
17 the complaints that you say in your allegations on
18 page five.

19 MS. MOORE: Off the record.

20 VIDEOGRAPHER: We're off. The time is
21 13:38.

22 (Off the record.)

23 VIDEOGRAPHER: We're back on the record.

24 The time is 1:39.

1 BY MS. MOORE:

2 Q. All right. Doctor, have you found places
3 in your care and treatment records of Ms. Shively
4 where she has complained of these problems after her
5 mesh surgery?

6 A. Well, on June 18th, she complained of low
7 back discomfort and hip discomfort.

8 Q. Okay. Anything else?

9 A. Nope, that's it.

10 Q. That's it. So as you sit here today, you
11 don't have any other complaints from the patient
12 that would substantiate any of the comments or
13 allegations that you attribute to the mesh products?

14 MR. KOTT: Object to the form.

15 Doctor, answer as best you can.

16 THE WITNESS: I never saw her after that
17 last visit.

18 BY MS. MOORE:

19 Q. But I'm talking about from the time you
20 treated her until she was released, you don't have
21 any evidence that she had any of these types of
22 problems, correct?

23 MR. KOTT: Object to the form. You can

24 clean it up if you say when you mean released,

1 released from whom? Him, Gomelsky, Porter?

2 Who are you talking about, released?

3 BY MS. MOORE:

4 Q. I'm talking about your care right now,
5 sir.

6 MR. KOTT: Okay. Thank you.

7 THE WITNESS: The two documented were the
8 two-week postoperative, and then would have
9 been June 18th.

10 BY MS. MOORE:

11 Q. So, I'm sorry, the two documented, and the
12 two week post-op?

13 A. When I examined her and she had some
14 tenderness in the rectovaginal septum area.

15 Q. All right. Now tenderness two weeks
16 post-op is pretty customary, correct?

17 A. Well, the IFU states two to three weeks'
18 recovery.

19 Q. And that's two weeks?

20 A. Yeah.

21 Q. Okay. So it's pretty customary, right?

22 A. It could be.

23 Q. Okay. Now, let's talk about the back
24 pain.

1 A. The low back discomfort?

2 Q. The low back discomfort. Not mention of
3 back pain, right?

4 A. I'm sorry. Low back discomfort.

5 Q. And because of that one complaint,
6 you're saying that all of these other
7 conditions are related to the mesh? There's no
8 evidence of these conditions.

9 MR. KOTT: Object to the form. Object to
10 the commentary.

11 BY MS. MOORE:

12 Q. Is there any evidence of these conditions?

13 A. My opinion --

14 Q. I know. I want to know the basis for your
15 opinion --

16 A. Right.

17 Q. -- that Ms. Shively experienced these
18 complaints as a result of the mesh surgery involving
19 the TVT and the Prolift.

20 A. My examination gives everything here that
21 I saw.

22 Q. Okay.

23 A. So in terms of my opinion, it's based on
24 experience and other expertise -- and other visits.

1 Q. But --

2 A. Because I didn't see her after that time.

3 Q. All right. So you're speculating?

4 MR. KOTT: Object to the form.

5 THE WITNESS: No, I'm not.

6 BY MS. MOORE:

7 Q. You're making a diagnosis of a patient on
8 things that aren't in your records?

9 MR. KOTT: Object to the form.

10 BY MS. MOORE:

11 Q. Is that correct?

12 MR. KOTT: Object to the form.

13 Doctor, don't answer that question.

14 This is objectionable in the fact that you
15 know he has reviewed multiple other doctors'
16 records.

17 MS. MOORE: Wait, wait, wait. Don't coach
18 the witness.

19 MR. KOTT: Come on, Kim.

20 BY MS. MOORE:

21 Q. I want to know based on your records,
22 based on what you have in front of you, what
23 evidence do you have that she had any of these
24 conditions?

1 MR. KOTT: Objection to the form.

2 What do you mean by in front of him? The
3 entirety of what he reviewed, his medical
4 records?

5 MS. MOORE: Whatever he wants to show me.
6 Show me.

7 MR. KOTT: Okay.

8 THE WITNESS: I told you, this is based on
9 everything that I reviewed at the time of my
10 expert opinion as well as the examinations and
11 the follow-up thereafter, which of course, I
12 didn't have privy to Dr. Gomelsky's or Dr.
13 Porter's follow-ups at that time.

14 BY MS. MOORE:

15 Q. Wouldn't you think it would be important
16 to have that information before you prepared a
17 report and gave a deposition?

18 MR. KOTT: Object to the form. That is
19 patently misrepresenting. He, in fact, did
20 have all the information and it's on his list.
21 This is getting very --

22 MS. MOORE: I object to the coaching.

23 MR. KOTT: -- very much out of line and
24 misleading.

1 BY MS. MOORE:

2 Q. I thought you said you didn't have Dr.
3 Gomelsky's or Dr. Porter's. If I misunderstood you,
4 please --

5 MR. KOTT: He never said that.

6 BY MS. MOORE:

7 Q. Did you have Dr. Gomelsky and Dr. Porter's
8 records?

9 A. When I wrote the expert opinion report,
10 those were a part of that, and you can see that in
11 my summary.

12 Q. All right. And so okay, then that's
13 fair. But name one record that substantiates
14 any problem that you've listed --

15 MR. KOTT: Way over. Don't answer any
16 further questions.

17 MS. MOORE: The Court would allow me the
18 courtesy of answering this one question.

19 MR. KOTT: Uh-unh, we're done.

20 How many minutes is she over?

21 VIDEOGRAPHER: About three.

22 MR. KOTT: Okay.

23 MS. MOORE: I'm going to ask Counsel that
24 you allow this witness to answer the question

1 that has been posed on the record.

2 MR. KOTT: Okay. What is the question?

3 BY MS. MOORE:

4 Q. As we sit here today, Doctor, looking at
5 the complaint that you attribute -- strike that.

6 As we sit here today, Doctor, you have
7 attributed certain complaints to Ms. Shively as a
8 result of her surgery with the Prolift and the TVT,
9 correct?

10 A. Correct.

11 Q. Do you have any evidence that she, in
12 fact, has these conditions? Anything that you can
13 point to in your records before you that would
14 substantiate any of these diagnoses?

15 MR. KOTT: Only his records.

16 MS. MOORE: Any records.

17 MR. KOTT: Oh, Jesus.

18 MS. MOORE: I'm entitled to know the basis
19 of his opinions.

20 MR. KOTT: And he's trying to tell you,
21 but you keep saying the records in front of
22 him. Are you talking about his medical
23 records? Gomelsky's records? Porter's
24 records? All of the records?

1 You see what I'm saying? If you're trying
2 to get --

3 MS. MOORE: I see exactly what you're
4 doing.

5 MR. KOTT: If you're trying to get to his
6 medical records, he's told you, no, that it's
7 not in there.

8 BY MS. MOORE:

9 Q. Okay. Where is it?

10 MR. KOTT: Okay.

11 THE WITNESS: It's in the other expert
12 opinions.

13 BY MS. MOORE:

14 Q. Okay. Where?

15 A. Oh, actually in the medical records of Dr.
16 Gomelsky and Dr. Porter.

17 Q. Okay. Can you show me?

18 A. I don't think I have those in front of me.

19 Q. You don't have those?

20 MR. KOTT: He said in front of him.

21 BY MS. MOORE:

22 Q. So you're relying on expert opinions --

23 MR. KOTT: Stop. Wait.

24 MS. MOORE: Okay. No further questions.

1 I think I get the picture.

2 MR. KOTT: No, you don't get the picture.

3 MS. MOORE: I get the picture.

4 MR. KOTT: I am very disappointed.

5 MS. MOORE: I am going to reserve my
6 right because all of the documents have not
7 been produced. I'm going to reserve my right
8 to resume the deposition on Ms. Shively with
9 respect to Dr. Goodyear.

10 MR. KOTT: And I am going to object to it.

11 MS. MOORE: Objection noted.

12 VIDEOGRAPHER: Are we going off the
13 record?

14 MR. KOTT: Yes.

15 VIDEOGRAPHER: Okay. We're off. The time
16 is 1:46.

17 (Luncheon recess taken.)

18 VIDEOGRAPHER: Okay. We are back on the
19 record. Starting disc number three. The time
20 is 2:47 p.m.

21 EXAMINATION

22 BY MR. KOTT:

23 Q. Good afternoon, Dr. Goodyear. As you know
24 I'm Joe Kott and my firm has hired you to review

1 these cases and work with us as an expert; is that
2 correct?

3 A. That is correct.

4 Q. Doctor, in the course of our interactions
5 over the last several months, has anybody from my
6 firm, including myself, tried to influence your
7 opinions, direct your opinions or shape your
8 opinions in any fashion?

9 A. No.

10 Q. Are your opinions as you express in this
11 case yours?

12 A. They are.

13 Q. Okay. Now, Doctor, at all times that you
14 performed surgery on the patients that are subject
15 of our litigation, okay, were you board certified in
16 OB/GYN at all times?

17 A. Yes.

18 Q. Okay. And when you performed those
19 surgeries, you had a very active pelvic floor
20 surgery practice?

21 A. Yes.

22 Q. Okay. Now, today in your current
23 practice, do you still see female patients?

24 A. I do.

1 Q. What percentage of your practice is female
2 patients?

3 A. Roughly 60 to 70 percent.

4 Q. Okay. In that practice, do you do
5 OB/GY -- or, excuse me, gynecological exams?

6 A. I do.

7 Q. And in those patients that you do
8 gynecological exams, do you do non-surgical
9 treatment of gynecological conditions that you find
10 on examination?

11 MS. MOORE: Object to the form.

12 THE WITNESS: I do.

13 BY MR. KOTT:

14 Q. Okay. And the non-surgical treatments you
15 do can involve medications, things of that nature?

16 A. That's correct.

17 MS. MOORE: Object to the form. Leading.

18 Q. Okay. Now, Doctor, in your current
19 practice, what do you do when you have a patient
20 that you find has a surgical problem, that needs
21 surgical treatment, a lady comes in, has a
22 gynecological problem, what do you do in that
23 setting?

24 A. I refer them out.

1 Q. And you have doctors that you refer them
2 to?

3 A. That's correct.

4 Q. Now, you were questioned at length about
5 your CV and your qualifications in this case to give
6 expert opinions; is that correct?

7 A. Yes.

8 Q. Were you ever questioned about any
9 connection you had to Ethicon and your training that
10 was done by Ethicon?

11 A. No.

12 Q. Okay. Were you, in fact, trained by
13 Ethicon in their procedures?

14 A. I was.

15 Q. Okay. In addition to being trained by
16 Ethicon, did Ethicon ever hire you to be an
17 instructor and teach other doctors how to do these
18 procedures?

19 A. Yes, they did.

20 Q. Okay. That's -- I'll withdraw that
21 question.

22 A. Okay.

23 Q. Doctor, I'm going to hand to you a
24 document.

1 MR. KOTT: Do we have another set of
2 these? Okay. I see that. Thank you.

3 BY MR. KOTT:

4 Q. Doctor, I'm going to show you a
5 document --

6 A. My glasses. I can see, that's fine.

7 Q. If you need your glasses --

8 A. Yeah, can we take a minute?

9 MR. KOTT: Go off the record, please.

10 VIDEOGRAPHER: Go off the record. The
11 time is 2:53 (sic).

12 (Off the record.)

13 VIDEOGRAPHER: All right. We are back on
14 the record. The time is 2:52.

15 (Exhibit No. 24 marked.)

16 BY MR. KOTT:

17 Q. Doctor, would you please identify which
18 record for us or this document for the record?

19 A. This is a Certificate of Attendance by the
20 Ethicon Endo-Surgery for Advanced Laparoscopic
21 Gynecological Procedures.

22 Q. Okay. Would you show that to the
23 videographer, jury and Judge, please?

24 And who awarded you that certificate?

1 A. Ethicon. Johnson & Johnson.

2 Q. And what was the date of that?

3 A. February 3rd, 2003.

4 (Exhibit No. 25 marked.)

5 Q. Thank you. Doctor, I'm going to show you
6 yet another example -- another document. Ask you if
7 you would please identify that document for the
8 record and show it to the Judge and jury.

9 A. Gynecare TVT-O Obturator System
10 Tension-free Support for Incontinence Professional
11 Education Program.

12 Q. And who awarded you that certificate?

13 A. This was with Gynecare Worldwide.

14 Q. Thank you. Are these two certificates the
15 same type of surgery that is the subject of the
16 litigation in which you have formed opinions?

17 A. The laparoscopic and the TVT, they are
18 both advanced procedures, yes; but this was primary
19 vaginal.

20 (Exhibit No. 26 marked.)

21 Q. And, Doctor, I'm going to show you yet
22 another document. Ask you if you would identify
23 this document for the record.

24 A. This is Gynecare Prolift Pelvic Repair

1 System Professional Education Program.

2 Q. And who granted you that document?

3 A. That was Gynecare Worldwide, May 16th,
4 2015.

5 Q. And tell me how did you come to receive
6 these -- this certificate from Ethicon and J&J,
7 correct?

8 A. Correct.

9 Q. How did you come to receive these, what
10 did you do to get these certificates?

11 A. Went down and listened to the didactic
12 lectures and was active in the cadaver lab.

13 Q. What is that, the cadaver lab?

14 A. Well, they would have a pelvis and we
15 would go in there and practice the surgical
16 procedure. And we would have guidance of that
17 surgical procedure in terms of technique, correct
18 anatomical landmarks, etcetera.

19 Q. Okay. And who would instruct you, was
20 this -- withdraw the question.

21 Was this an Ethicon-produced educational
22 system?

23 A. It was.

24 Q. Okay. Did you ever serve as a consultant

1 for Ethicon?

2 A. I did.

3 (Exhibit No. 27 marked.)

4 Q. Let me show you a document that is now
5 marked No. 27. Would you tell the Judge and jury
6 what this document is?

7 A. This is a description of activity, Prolift
8 Preceptorship.

9 Q. What is a preceptorship?

10 A. Basically teaching somebody how to do a
11 procedure.

12 Q. And you did that?

13 A. Yes, I did.

14 Q. Okay. And Ethicon paid you to do that?

15 A. Yes, they did.

16 Q. Attach this as Exhibit No. 27.

17 Doctor, I'm going to show you a document
18 which we are going to mark as Exhibit No. 28.

19 (Exhibit No. 28 marked.)

20 BY MR. KOTT:

21 Q. Doctor, this is a document also that I
22 would ask if it was a document provided to you by
23 Ethicon?

24 A. Yes.

1 Q. What does it tell you its purpose
2 was?

3 A. Ethicon Incorporated Travel Guidelines for
4 J&J Common Expense Reporting Policy.

5 Q. And that was in connection with your work
6 with Ethicon as a preceptor?

7 A. That is correct.

8 (Exhibit No. 29 marked.)

9 Q. Thank you. Okay. Doctor, I'm going to
10 show you yet another document and ask you if you
11 would identify this document, which I believe is
12 Exhibit No. 28?

13 A. No. 29.

14 Q. No. 29. Thank you.

15 A. Yes.

16 Q. What is this document?

17 A. This is a document from Ethicon
18 regarding -- regarding the education, payment, tax,
19 etcetera, taxpayer identification form for the
20 preceptorship.

21 Q. Okay. Doctor, are these documents that
22 I've shown you, both where you were being educated
23 in the use of the vaginal mesh by Ethicon, and when
24 you were educating other doctors in its use, are

1 these important parts of your credentials as an
2 expert in this case?

3 A. That is correct.

4 MS. MOORE: Object to form. Belated, but
5 object to the form.

6 BY MR. KOTT:

7 Q. I want to quickly go through these. Thank
8 you for offering.

9 Doctor, I'm going to show you what I
10 believe is a fairly long document.

11 MR. KOTT: Or are these multiple
12 documents?

13 MS. KOTT: Multiple documents.

14 BY MR. KOTT:

15 Q. Let me show you an in globo stack of
16 documents for the sake of time. And ask you to look
17 at these documents, and tell me if these are all
18 documents from Ethicon.

19 A. They are.

20 Q. Is Ethicon the manufacturer of the product
21 that is the subject of this litigation?

22 A. They are.

23 Q. What are those contracts, what are they
24 about? Just tell the Judge and jury why you have

1 Ethicon contracts in your file.

2 A. They were for contracts to be not only
3 preceptorship, but also master consulting agreement.

4 Q. What is a master consulting agreement?

5 A. Consultation to help a physician learn how
6 to do the procedure, manage, and perform side
7 effects -- or repair side effects that are related
8 to the complications of the procedure.

9 Q. And it's clear from these contracts that
10 Ethicon hired you to do that, correct?

11 A. Multiple times.

12 MR. KOTT: Mark this one, please. This
13 will be marked as No. 30 and attached.

14 (Exhibit No. 30 marked.)

15 BY MR. KOTT:

16 Q. Doctor -- thank you. Doctor, have you
17 done, in addition to doing implantations, as you
18 discussed, have you also done revisions where women
19 who had the pelvic mesh implanted, whether you did
20 it or someone else, did you have to come back and
21 reoperate on them for complications?

22 A. I did.

23 Q. Okay. That was part of your practice?

24 A. That is correct.

1 Q. Now, if you saw such a patient in your
2 office today and you examined them, what would you
3 tell that person regarding surgical care?

4 MS. MOORE: Object to the form of the
5 question.

6 THE WITNESS: I would refer them out for
7 revision.

8 BY MR. KOTT:

9 Q. Okay. Doctor, that you currently don't
10 perform surgical gynecological procedures, you
11 haven't forgotten how to do a pelvic exam, have you?

12 MS. MOORE: Object to form.

13 THE WITNESS: No, I have not.

14

15 BY MR. KOTT:

16 Q. Okay. You haven't forgotten how to
17 recognize pelvic disease, have you?

18 A. I have not.

19 MS. MOORE: Same objection.

20 Q. You haven't forgotten how to treat
21 non-surgical conditions, have you?

22 MS. MOORE: Same objection.

23 THE WITNESS: I have not.

24 BY MR. KOTT:

1 Q. In fact, you haven't forgotten out
2 to treat them surgically?

3 A. I have not.

4 MS. MOORE: Same objection. Sorry, you
5 have to give me a chance.

6 BY MR. KOTT:

7 Q. You haven't?

8 A. I have not.

9 Q. Doctor, you were shown several lawsuits
10 that had been filed with your name on them over the
11 last ten years or so. Do you recall that?

12 A. I do.

13 Q. Of any of the lawsuits that Ms. Moore
14 showed you, did any of them go to trial to a jury?

15 A. No.

16 Q. Did you pay one penny in settlement on any
17 of those cases?

18 MS. MOORE: Object to the form.

19 THE WITNESS: No.

20 BY MR. KOTT:

21 Q. Did your insurer pay any money on any of
22 those cases?

23 MS. MOORE: Object to form.

24 THE WITNESS: No.

1 BY MR. KOTT:

2 Q. So those were allegations for which you
3 never paid a nickel to anyone; is that correct?

4 MS. MOORE: Same objection.

5 THE WITNESS: That is correct.

6 BY MR. KOTT:

7 Q. In fact, one of them, Doctor, you weren't
8 even scrubbed in the procedure?

9 A. That's correct.

10 (Exhibit No. 31 marked.)

11 Q. Do we have those? Now, Doctor, I'm going
12 to show you yet another document. And, thank you.
13 This is going to be No. 31. Deposition Exhibit No.
14 31.

15 I ask you to take a look at this document
16 and tell the Judge and jury what that document is.

17 A. Ethicon Women's Health and Urology Prolift
18 Pelvic for Repair Systems Cadaver Lab.

19 Q. Now, is that a -- sort of a flyer for
20 doctors to attend the cadaver lab?

21 A. Yes, it is.

22 Q. Who is listed as one of the instructors on
23 that lab?

24 A. Nathan Goodyear.

1 Q. Is that you?

2 A. That is me.

3 Q. Is that an Ethicon document?

4 A. It is.

5 Q. Is that important in your qualifications
6 as an expert in this case?

7 MS. MOORE: Object to the form.

8 THE WITNESS: Teaching others, yes.

9 BY MR. KOTT:

10 Q. Do you recall the date of that when you
11 were instructing those other doctors?

12 A. I don't recall.

13 MS. MOORE: Object to the form of the
14 question.

15 Q. Thank you. Would you just look at No. 31
16 again and see what the time period was?

17 A. 8:00 a.m., Monday, November 14th, 2005.

18 Q. Did you actually, in fact, attend
19 that and instruct other physicians?

20 MS. MOORE: Object to the form.

21 THE WITNESS: I did.

22 (Exhibit No. 34 marked.)

23 BY MR. KOTT:

24 Q. Okay. Thank you. Doctor, I'm going to

1 show you another document and ask if you would
2 please look at it and identify that document?

3 A. Ethicon's Women's Health and Urology
4 Prolift Pelvic Floor Repair Systems Cadaver Lab.

5 Q. And is that, again, a flyer for other
6 physicians to go to attend this course?

7 A. It is.

8 Q. Okay. What's the date on that document?

9 A. That is 8:00 a.m., Friday, February 17th,
10 2006.

11 Q. Is it evident that that is an Ethicon
12 document to you?

13 A. Very clearly, yes.

14 Q. Why do you say it's an Ethicon document?

15 A. It says Ethicon Women's Health and Urology
16 up top.

17 Q. Thank you. Are you, again, listed on that
18 document as one of the participants in the
19 educational process?

20 MS. MOORE: Object to the form.

21 THE WITNESS: I am.

22 BY MR. KOTT:

23 Q. What is your title there?

24 A. Nathan Goodyear, M.D., gynecologist,

1 moderator.

2 Q. Is that activity important, in your opinion,
3 regarding your ability to render opinions in this
4 matter?

5 MS. MOORE: Object to form.

6 THE WITNESS: It is.

7 MS. MOORE: Let me get my objection in.

8 MR. KOTT: Kim, if you get one in late,
9 it's fine.

10 BY MR. KOTT:

11 Q. Doctor, I'm going to show you one more
12 document along these lines. And ask if you would
13 look at -- purport to you that this is an email.

14 A. It is.

15 Q. And who is that email from?

16 A. This email is from Robert Zipfel.

17 Q. Do you recognize that person, his name?

18 A. I do.

19 Q. Who is that?

20 A. Robert worked for Ethicon.

21 Q. Do you know what capacity he worked in?

22 A. I can't recall exactly.

23 Q. And when was that email -- well, let me
24 withdraw that.

1 Who was the email sent to?

2 A. The email was sent to me.

3 Q. And what did this individual tell you in
4 that email?

5 A. Just listing the list of faculty on
6 November 14th, 2005. Prolift Cadaver Lab.

7 Q. Were you listed there?

8 A. I was.

9 MS. KOTT: For the record, the Bates
10 number is cut off at the bottom, it's
11 FMESH00006165.

12 MR. KOTT: Attach this in continuation
13 No. 32, out of order. I'm sorry, we had
14 premarked it.

15 THE WITNESS: I said that email was to me,
16 it was not.

17 (Exhibit No. 32 marked.)

18 BY MR. KOTT:

19 Q. Who was it sent to?

20 A. The email was to Greg Prines, Scott
21 Jones, Charles Riedley, but it listed me as a final
22 list of faculty.

23 Q. Thank you. What contact did you have, if
24 you can recall, with Mr. Robert Zipfel, do you

1 recall any?

2 A. Only emails.

3 Q. Okay. Now, Doctor, let's talk a little
4 bit about this book with the title "Manboob Nation."

5 A. Yes.

6 Q. You have been questioned about that
7 before?

8 A. Correct.

9 Q. Now, Doctor, this book has kind of a
10 grabber name to it, is that fair to say, a layman's
11 name?

12 A. Fair to say, yes.

13 Q. Tell me about the content. Is this a
14 serious medical book for physicians?

15 MS. MOORE: Object to the form of the
16 question.

17 THE WITNESS: This is a specific review of
18 the literature. The publication of the
19 literature is for physicians, that is correct.

20 BY MR. KOTT:

21 Q. And how many references did you use in this
22 book, approximately?

23 A. 799.

24 Q. And you read those articles in preparation,

1 or abstracts of them, in preparation for this book?

2 A. Every one.

3 Q. So this, in your opinion, is a serious book
4 for doctors, correct?

5 MS. MOORE: Object to the form. Leading.

6 THE WITNESS: Correct.

7 BY MR. KOTT:

8 Q. Thank you. Has a kind of layman's name,
9 though, isn't that fair to say?

10 A. From my six-year-old daughter at the time.

11 Q. Tell me about that, she gave you the name
12 for the book?

13 A. We were at Disney World, and she said,
14 Dad, look, look boobs. We were at the water park at
15 Disney World and I was like I can't believe there's
16 a topless lady down there. But it was a very large
17 man walking by with --

18 Q. Man boobs?

19 A. -- very large man boobs.

20 Q. Got it. And that's where the title came
21 from?

22 A. In a yellow Speedo. Some things you never
23 forget.

24 MR. KOTT: Thank you.

1 MS. MOORE: Stipulate to that.

2 (Exhibit No. 33 and No. 35 marked.)

3 MR. KOTT: I'm going to attach at this
4 point several notices of cross reference,
5 Cross Notice of Video Deposition. And one is
6 No. 35. And it's a cross notice relating to
7 the deposition today, Exhibit No. 35.

8 MS. KOTT: Yes, the first deposition.

9 MR. KOTT: Yes, first dep. The entirety
10 of the first deposition. Thank you. And do
11 you have any more of those or just one?

12 MS. KOTT: Just one, for now.

13 MR. KOTT: Thank you. Do I need to show
14 it to you all? All right.

15 BY MR. KOTT:

16 Q. Doctor, let me go to what has been used as
17 Exhibit No. 17 in our questioning by Ms. Moore
18 earlier on in this case.

19 A. Yes.

20 Q. And I would like you, if you would,
21 please, to look -- you were questioned about page
22 eight. I'd like you to go to Bates number --
23 I'll show it to you -- 346084814. The
24 pages aren't -- I don't think they are. Let's see,

1 maybe this can be done this way. It's page one.

2 All right. And if you would look at page
3 one and the first paragraph from the bottom. You
4 see that paragraph?

5 A. I do.

6 Q. Is it correct that this Ethicon document
7 contains the following: "A recent study published
8 in Obstetrics and Gynecology by the Nordic
9 transvaginal mesh group demonstrates that the rate
10 of perioperative complications with Gynecare Prolift
11 System is very low."

12 Did I read that properly?

13 A. Verbatim, yes.

14 Q. Thank you. Is that what you were
15 referring to when you said that you could not trust
16 the information retrospectively that was being given
17 by the manufacturer?

18 MS. MOORE: Object to the form question.

19 THE WITNESS: Yes.

20 BY MR. KOTT:

21 Q. That's the kind of information that's
22 disturbing to you today as you sit here?

23 MS. MOORE: Same objection.

24 THE WITNESS: Very much so because it's

1 misleading.

2 BY MR. KOTT:

3 Q. And this is the same document that you
4 were questioned about earlier, correct?

5 A. That is correct.

6 Q. Item 17. You were shown, the last
7 paragraph on page eight, would you please look
8 at that paragraph again?

9 A. I'm there.

10 Q. Now, you quoted -- you read into the
11 record that the quote rate of mesh exposure was
12 "three to 17 percent," correct, that's what's
13 written here?

14 A. That's correct.

15 Q. All right. And you have also testified
16 you had information, verbal information or some
17 other information, from a French article regarding
18 the rate of exposure?

19 MS. MOORE: Object to the form of the
20 question.

21 THE WITNESS: It was one of the resources,
22 yes.

23 BY MR. KOTT:

24 Q. Okay. Let's go to the next sentence and

1 would you read the next sentence into the record?

2 A. Beginning with experience?

3 Q. Yes, sir.

4 A. "Experience in avoiding hysterectomy when
5 possible will reduce the rate to one to
6 six percent."

7 Q. So you did, in fact, at least see in this
8 document a rate of one to six percent for mesh
9 exposure when doing this procedure on patients who
10 haven't had a hysterectomy, correct?

11 MS. MOORE: Object to the form of the
12 question.

13 THE WITNESS: Correct.

14 BY MR. KOTT:

15 Q. So you're saying that is not something
16 that's not in your documents, is it?

17 MS. MOORE: Same objection.

18 THE WITNESS: It's right there.

19 MR. KOTT: Okay. I'm sorry for the okay.

20 Strike the okay.

21 BY MR. KOTT:

22 Q. Go to the next document, please. Put that
23 back in the stack. I'm doing my very best to keep
24 orderly here. And we have, I believe, two IFUs.

1 What does that stand for, Doctor, IFU?

2 A. Instructions for use.

3 Q. Instructions for use?

4 A. Yes.

5 Q. Okay.

6 MS. MOORE: And, Counsel, just remind you
7 of your 30-minute limit. I don't know how much
8 time he has.

9 MR. KOTT: Thank you.

10 VIDEOGRAPHER: You have got about 12
11 minutes.

12 MR. KOTT: Thank you.

13 BY MR. KOTT:

14 Q. Now, Doctor, you also rendered opinions in
15 this case regarding the use of the mesh in Ms.
16 Shively, correct?

17 A. Correct.

18 Q. And I believe we have that exhibit marked
19 as No. 5, correct?

20 A. Correct.

21 MS. MOORE: Counsel, that's --

22 MR. KOTT: Is that correct, No. 5?

23 MS. MOORE: Yeah, expert report. No. 3, I
24 believe.

1 THE WITNESS: Is that five or three? I
2 think it's a three.

3 MS. MOORE: I believe it's a three.

4 BY MR. KOTT:

5 Q. Thank you. All right. Now, Doctor, I
6 want you to tell us briefly the methodology that you
7 used in evaluating this particular case for your
8 opinions that you rendered.

9 A. First was the --

10 MS. MOORE: Object to the form. Leading.

11 Q. Did you use a methodology in this case?

12 A. I did.

13 Q. Would you tell us that methodology?

14 A. First I determined if there was any
15 application I had actually in these cases, first.

16 Second, was based on my residential
17 experience and training.

18 Third, was the training and experience and
19 education through the provided Ethicon teaching
20 instruction classes. And then the application of
21 that to the patient in this case, as well as a
22 review of the literature up to that point relating
23 to mesh vaginal surgery, pelvic organ prolapse and
24 urinary incontinence.

1 Q. Thank you. Did you include in your
2 report -- if we were to go to your report, on page
3 five, six and partially seven, did you do a
4 differential diagnosis and record your differential
5 diagnosis in Ms. Teri Shively's case?

6 A. I did.

7 Q. Now, Doctor, in your opinion, would you
8 read opinion number one into the record just for
9 complications?

10 A. Teri Shively's injuries were caused by the
11 implanted Prolift and TVT-O devices.

12 Q. Doctor, is that opinion to a reasonable
13 degree of medical certainty?

14 A. Absolutely.

15 Q. Thank you. And did you go on into your
16 report to give the basis for that opinion?

17 A. I did.

18 Q. Thank you. Would you please go to your
19 second opinion?

20 A. I'm there.

21 Q. Would you read that into the record?

22 A. The Prolift and TVT-O devices implanted in
23 Teri Shively were unreasonably dangerous due to the
24 lack of adequate warning.

1 Q. Thank you. Doctor, did you go into the
2 basis for that opinion on page eight and partially
3 nine?

4 MS. MOORE: Object to form.

5 THE WITNESS: I did.

6 BY MR. KOTT:

7 Q. And you gave your basis and your reasons
8 in that report, correct?

9 A. I did.

10 MS. MOORE: Same objection.

11 Q. Doctor, do you swear by this particular
12 report that those, in fact, are your opinions and
13 that the basis for them are contained therein?

14 MS. MOORE: Objection.

15 THE WITNESS: Yes.

16 BY MR. KOTT:

17 Q. Thank you. And all the opinions that you
18 rendered here, are they to a reasonable degree of
19 medical certainty?

20 A. Yes.

21 Q. Would you please go to the next opinion,
22 if you could, please?

23 A. I'm there.

24 Q. Page three -- I mean page nine. Would you

1 please read into the record the third opinion you
2 rendered in Ms. Shively's case?

3 A. The Prolift and TVT-O implanted in Teri
4 Shively were unreasonably dangerous because they did
5 not conform to the manufacturer's express
6 warranties.

7 Q. Thank you. Now, Doctor, would you please
8 go down on that same page and say you have recorded
9 there letters A through E and then going on into
10 page ten, you have more items listed; is that
11 correct?

12 A. That is correct.

13 Q. Are those items listed in your report,
14 those assertions by the company that you felt made
15 the product not conform with these assertions?

16 MS. MOORE: Object to the form.

17 THE WITNESS: Yes.

18 BY MR. KOTT:

19 Q. Thank you. And, again, those opinions are
20 to a reasonable degree of medical certainty,
21 correct?

22 A. Yes.

23 Q. All right. Now, Doctor, I want you please
24 to go back to your report on page eight. At the

1 time that you performed surgery on Ms. Shively,
2 and, in fact, any of the times you performed this
3 type of surgery, the TVTs, all the transvaginal mesh
4 implantation, did you believe that you had the best
5 information available from the manufacturer?

6 MS. MOORE: Object to the form of the
7 question.

8 THE WITNESS: Yes.

9 BY MR. KOTT:

10 Q. Have you subsequently found out that that
11 was incorrect?

12 MS. MOORE: Same objection.

13 THE WITNESS: Yes.

14 BY MR. KOTT:

15 Q. Do you feel that the manufacturer did not
16 give you adequate information regarding their
17 products?

18 MS. MOORE: Same objection.

19 THE WITNESS: Yes.

20 BY MR. KOTT:

21 Q. Do you feel that lack of adequate
22 information made the product unreasonably dangerous?

23 MS. MOORE: Same objection.

24 THE WITNESS: Yes.

1 BY MR. KOTT:

2 Q. Do you feel like the lack of compliance
3 with the warranties given by the manufacturer made
4 this product unreasonably dangerous?

5 MS. MOORE: Objection.

6 THE WITNESS: Yes.

7 BY MR. KOTT:

8 Q. Were the injuries suffered by Ms. Shively
9 the result of the mesh implantation?

10 MS. MOORE: Objection.

11 THE WITNESS: Yes.

12 BY MR. KOTT:

13 Q. Were those injuries suffered by her as a
14 result of you implanting this product without
15 adequate information from the manufacturer?

16 MS. MOORE: Same objection.

17 THE WITNESS: Yes.

18 BY MR. KOTT:

19 Q. Doctor, were there alternative therapies
20 that could have been done for Ms. Shively at the
21 time she had the Prolift implants?

22 A. Yes.

23 Q. What were those alternative therapies?

24 A. Nothing. Pessaries. More traditional

1 anterior colporrhaphy. Posterior colporrhaphy.

2 Q. Now, if you had known about the actual
3 risks and the actual dangers of this particular
4 product, would you have used them in 2008 at the
5 time that you implanted them?

6 MS. MOORE: Object to the form of the
7 question. And leading.

8 THE WITNESS: I would not have used the
9 Prolift and the TVT-O.

10 MR. KOTT: Thank you. Let's go off the
11 record, please.

12 VIDEOGRAPHER: The time is 3:20 p.m.
13 (Off the record.)

14 MR. KOTT: We are back on the record. The
15 time is 3:29.

16 BY MR. KOTT:

17 Q. Doctor, we were on a break a moment ago.
18 Did you look at some medical records during that
19 break?

20 A. I did.

21 Q. Would you tell us what records you looked
22 at?

23 A. These are medical records related to Teri
24 Shively.

1 Q. And whose records are they?

2 A. Alex Gomelsky, Green Clinic. Green Clinic
3 Jonesborough. Shane McVey and William Slusher.

4 Q. Doctor, did you review all of those
5 records in forming your opinions expressed in this
6 case?

7 A. I did.

8 Q. Anything to the contrary would be
9 erroneous?

10 MS. MOORE: Object to the form of the
11 question.

12 THE WITNESS: Correct.

13 (Exhibit No. 37 marked.)

14 BY MR. KOTT:

15 Q. And you also looked at Dr. Porter's
16 medical records; is that correct?

17 A. That is correct.

18 MS. MOORE: Objection. Leading.

19 Q. Thank you. And you have those too? We
20 have that.

21 And, Doctor, everything that was listed on
22 your list of reference materials, you also included
23 those in your study to form opinions in this case?

24 A. Correct.

Nathan W. Goodyear, MD

1 MR. KOTT: Thank you, Doctor.

2 How many seconds?

3 VIDEOGRAPHER: You're over.

4 MR. KOTT: Thank you very much.

5 VIDEOGRAPHER: And we are going off. The
6 time is 3:30.

7 (Deposition concluded at 3:30 p.m.)

8 *****

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18 REASON: _____

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20 REASON: _____

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24 REASON: _____

ACKNOWLEDGMENT OF DEPONENT

I, _____, do

hereby certify that I have read the
foregoing pages, and that the same is
a correct transcription of the answers
given by me to the questions therein
propounded, except for the corrections or
changes in form or substance, if any,
noted in the attached Errata Sheet.

NATHAN W. GOODYEAR, M.D.

DATE

Subscribed and sworn

to before me this

_____ day of _____, 20____.

My commission expires: _____

Notary Public

REPORTER CERTIFICATE

STATE OF TENNESSEE

COUNTY OF KNOX

I, Michele Faconti, RPR, Licensed Court Reporter, LCR #667, in and for the State of Tennessee, do hereby certify that the deposition of Nathan W. Goodyear, M.D., taken on March 3rd, 2016, was reported by me and that the foregoing transcript, pages 1 through 236, inclusive, is a true and accurate record to the best of my knowledge, skills and ability.

I further certify that I am not related to, nor an employee or counsel of any of the parties to the action as defined under T.C.A. Section 24-9-136, nor am I financially interested in the outcome of this case. Reading and signing not waived.

In witness thereof, I have hereunto set my hand on this 14th day of March, 2016.

Michele Faconti: 03/14/16

22:32:01 AM; Knoxville

Tennessee; TN LCR 667

expires: 6-30-2016